SUPREME COURT OF THE UNITED STATES.

No. 262.

THE UNITED STATES, ON THE RELATION OF R. R. CRAWFORD, PLAINTIFF IN ERROR,

vs.

HENRY ADDISON, EDWARD M. LINTHICUM, SAMUEL CROPLEY, JUDSON MITCHELL, JOSEPH LIBBEY, WILLIAM H. TENNEY, AND WILLIAM EADES.

IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

	Original.	Print.
Writ of error	1	1
Citation and service	2	1
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Judgment	12	6
Bill of exceptions	13	6
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1 UNITED STATES OF AMERICA:

In the supreme court of the District of Columbia, February 11, 1865.

UNITED STATES, for use of *of* R. R. Crawford, pl'ffs.
vs.
HENRY ADDISON, EDWARD M. LINTHICUM, SAMUEL Cropley, Judson Mitchell, Joseph Libbey, Wm. H. Tenney, and Wm. Eades, defendants.

At law, No. 205. Trials January term, 1863.

The President of the United States to the justices of the supreme court of the District of Columbia:

Because in the record and proceedings, as also in the rendition of your judgment in the above-entitled cause, a manifest error has happened to the great damage of the said plaintiffs, as by their complaint appears; and it being fit that the error, if any has been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that, then under your seal distinctly and openly, you send the record and proceedings aforesaid with all things con-
2 cerning the same to the Supreme Court of the United States, together with this writ, so that you have the same at Washingington on the first Monday of December next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness Salmon P. Chase, Chief Justice of said Supreme Court, the eleventh day of February, in the year of our Lord one thousand eight hundred and sixty-five.

[SEAL.] R. J. MEIGS,
Clerk of the Supreme Court of the District of Columbia.

[5 ct. rev stamp]

To Henry Addison, Edward W. Linthicum, Samuel Cropley, Judson Michell, Joseph Libey, Wm. H. Tenney, and Wm. Eades, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the District of Columbia, wherein the United States, for the use of R. R. Crawford,
3 are plaintiffs and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf. Witness D. K. Carter, chief justice of said supreme court of said District, February 11th, 1865.

D. K. CARTER, *Ch'f Justice.*

Service acknowldged February 11th, 1865.

JOS. H. BRADLEY,
Att'y for H. Addison and others.

Know all men, by these presents, that we, Richard R. Crawford, R. W. Burgess, and Charles Gordon are held and firmly bound unto the said Henry Addison, Edward M. Linthicum, Samuel Cropley, Judson Mitchell, Joseph Libby, William H. Tenney, and William Edes in the sum of two hundred dollars, to be paid to the said Henry Addison, Edward M. Linthicum, Samuel Cropley, Judson Mitchell, Joseph Libby, William H. Tenney, their heirs: to which payment well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors and administrators firmly by these presents. Sealed with our seals and
4 da the 11th day of February, 1865.

Whereas the abovenamed Richard R. Crawford has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the supreme court of the District of Columbia. Now, therefore, the condition of this obligation is such that if the above named Richard Crawford shall prosecute his said writ of error to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

RICHARD CRAWFORD. [SEAL.]
R. W. BURGESS. [SEAL]
CHARLES GORDON. [SEAL.]

Signed, sealed, and delivered in presence of—
GILBERT MUNGER.

The foregoing bond is hereby approved, this 13th day of Feb. 1865.
D. K. CARTTER, *Ch'f Justice.*

DISTRICT OF COLUMBIA, *to wit:*

I, Return J. Meigs, clerk of the supreme court of the District of Columbia, in obedience to the foregoing writ of error, do herewith transmit a true copy of the record of the cause in said writ mentioned, and of all the proceedings of said supreme court of the District of Columbia in said cause, as follows, to wit:

5 DISTRICT OF COLUMBIA, *to wit:*

The United States of America to the marshal of the District of Columbia, greeting:

We command that you summon Henry Addison, Edward M. Linthicum, Samuel Cropley, Judson Mitchell, Joseph Libbey, William H. Tenney, William H. Edes before the circuit court of the District of Columbia, to be held for the county aforesaid at the city of Washington, on the third Monday of January, to answer unto United States of America in a plea of debt. Hereof fail not at your peril, and have you then and there this writ.

Witness Jas. Dunlop, esquire, chief justice of our said court, at the city of Washington, the 17th day of January, anno Domini one thousand eight hundred and sixty-one.

Issued the 18th day of January, 1861.

JNO. A. SMITH, *Cl'k.*

CARLISLE & MAURY.

The above indorsed on the back:

Non est Henry Addison; summoned the others, and Bradley & B.

W. SELDEN, *Marshal.*

Circuit court of the District of Columbia for Washington county, to wit:

6 Henry Addison, Edward M. Linthicum, Samuel Cropley, Judson Mitchell, William H. Tenney, Joseph Libbey, and Wil-H. Edes, late of the county aforesaid, were summoned to answer unto the United States of America in that they render to the said United States the sum of three thousand dollars which they owe to and unjustly detain from them, and thereupon the said plaintiffs, by J. M. Carlisle and R. I. Brent, its attorneys, complain for that whereas the said defendants heretofore, to wit: on the fourteenth day of December, in the year of our Lord eighteen hundred and fifty-nine, at the county aforesaid by their certain writing, obligatory sealed with their seals (and to the court now here shown) the date whereof is the day and year aforesaid acknowledged themselzes to be bound unto the plaintiffs in the sum of three thousand dollars with a condition thereunder written that if the said Henry Addison should prosecute to effect a certain writ of error obtained by him to reverse a judgment rendered by said circuit court for the county aforesaid in a suit wherein the said United States were plaintiffs, at the relation of Richard R. Crawford, and the said Henry Addison was defendant, and if the said Henry Addison should answer all damages and costs if he should fail to make his plea good then the said obligation to be void, otherwise to be and remain in full force and virtue.

7 1st breach. And the said plaintiffs in fact say that the said Henry Addison did not prosecute to effect his writ of error in the condition of said writing obligatory mentioned, and this the said plaintiffs are ready to verify. Wherefore the plaintiffs pray judgment and debt aforesaid, together with their damages sustained by occasion of the suing forth said writ of error to them to be adjuded and so forth.

2d breach. And the plaintiffs in fact further say that the said Henry Addison did not answer all damages and costs by his failure to make his plea good, in this, to wit: that he did not satisfy and pay unto the said Richard R. Crawford, at whose relation the suit recited in the condition of said writing obligatory was brought, the sum of one thousand dollars annually, payable monthly, for the term of two years, commencing on the first day of March, in the year A. D. eighteen hundred and fifty-nine, which said sum of money payable as aforesaid, the said Richard R. Crawford, would otherwise have for

his own use but for the suing out of the writ of error aforesaid, by the said Henry Addison, and this the said plaintiffs are ready to verify. Whereof the plaintiffs pray judgment and their debt aforesaid, together with their damages sustained by occasion of the suing forth of said writ of error by said Henry Addison to them to be adjudged.

3d breach. And the plaintiffs in fact further say that the
8 said Henry Addison did not answer all damages and costs accruing from his failure to prosecute his said writ of error with effect in this, that he did not pay to Richard R. Crawford at whose relation the aforesaid recited suit was instituted, the sum of three thousand dollars whereof the said Crawford was wrongfully deprived by the force and effect of said writ of error sued forth by said Henry Addison as aforesaid, and this the plaintiffs are ready to verify. Wherefore they pray judgment and their debt aforesaid, together with their damages sustained by occasion of the suing forth of said writ of error by said Henry Addison, and his failure to prosecute the same to effect, to them to be adjudged, &c.

4th breach. And the plaintiffs in fact further say that the said Henry Addison did not answer all damages and costs accruing by reason of his failure to prosecute said writ of error to effect in this, to wit, that by force and effect of the suing forth of said writ of error as aforesaid. and the supersedeas of the judgment recited in the condition of said writing obligatory caused by suing forth said writ of error, the said Henry addison received a large sum of money, to wit, two thousand dollars payable to him monthly. as acting mayor of Georgetown, which otherwise he would not have received, and which

sum of money, with legal interest thereon, became and was pay-
9 able by the said Henry Addison upon his failure to prosecute his said writ of error to effect as aforesaid, as money had and received by him to the use of said Richard R. Crawford, the lawful mayor of Georgetown, but the said plaintiffs in fact say that the said Addison did not pay over to said Crawford the said sum of money so by him received wrongfully for force and effect of said writ of error, although requested so to do on the first day of May, 1861, at the county aforesaid, and the said sum of money was thereby wholly lost to the said Crawford, at whose relation and for whose benefit the said judgment was rendered, and this the plaintiffs are ready to verify. Whefore they pray judgment and their debt aforesaid, together with the damages sutained by occasion of the suing forth of said writ of error, and the failure of said Addison to prosecute the same to effect, whereby the plaintiffs say that the said writing obligatory became and is forfeited, and they claim their debt aforesaid, whereby an action hath accrued to the said plaintiffs to demand and have of and from the said defendants the said above-mentioned sum of three thousand dollars above demanded, yet the defendants (although often requested so to do) have not as yet paid the said sum of three thousand dollars or any part thereof to the said plaintiffs; but they to do this

have hitherto wholly refused, and still do refuse, to the dam-
10 age of the said plaintiffs in the sum of five hundred dollars, and therefore they bring this suit.

CARLISLE & BRENT, *Plaint'ffs' Att'ys.*

Proceedings before the supreme court of the District of Columbia, holding a special term and a circuit court, in pursuance of the rule of the court in such case made and provided, commencing on the first Tuesday of November, 1864.

Wednesday, December 28, 1864. The court resumes its session according to adjournment, Chief Justice Cartter presiding.

UNITED STATES, for use of Richard R. Crawford, pl'tff
vs.
HENRY ADDISON, EDWARD M. LINTHICUM, Samuel Cropley, Judson Mitchell, Joseph Libbey, William H. Tenney and William Edes, defendants.

At law No. 205. Trials at Jan'y 1863. Debt on writ of error bond.

Come, as well the plaintiff, by their attorney, Mr. Brent, as the defendants by their attorneys, Messrs. Bradley senior, and Henry Winter Davis; and thereupon comes a jury of good and lawful men of the District of Columbia, to wit: Henry Thorn, Lambden W. Worthington, James Cosparis, James Osborn, Michael French, Jonathan
11 Buckman, Reuben Daw, Samuel Brereton, Thomas Thornley, Richard L. Ross, Francis B. Lord, and John Murphy, who being sworn to try the issue joined between said parties, after hearing the case in part, are respited from rendering their verdict till tomorrow, at the meeting of the court.

UNITED STATES, for use of R. R. Crawford, pl'ffs,
v.
HENRY ADDISON and others, def'ts.

At law No. 205. Jan'y T. 1863. Debt on writ of error bond.

Thursday, December 29, 1864. And now again come here the parties aforesaid, by their attorneys aforesaid, and the same jury, who from rendering their verdict were respited yesterday; and the said jury, after a further hearing of the evidence in the case, and receiving the instructions of the court, to which instructions, and the court refused to give the instructions prayed for by the plaintiff, the plaintiff excepts in law, and tenders his two several bills of exceptions, which are signed, sealed and made part of the record, upon their oath say, that they find the issue joined in favor of the defendant; and thereupon the plaintiff moves the court for a new trial upon the exceptions filed as aforesaid which motion being refused, the plaintiff prays an appeal to the court in general term, which is allowed.

12 Proceedings before the supreme court of the District of Columbia, holding a general term commencing the third Monday of January, 1865.

Friday, February 3, 1865. The court resumes its session, according to adjournment; present Chief Justice Cartter and Justices Olin and Wylie.

UNITED STATES, for the use of R. R. Crawford, pl'ff,
against
HENY ADDISON and others, defendants.

At law No. 205. Trials to January term, 1863. Action on writ of error bond in the case reported 22. Howard, 174, 185.

And now again come here the parties aforesaid, by their attorneys aforesaid, and thereupon after argument by said attorneys of the matters of the plaintiffs' appeal from the rulings of the justice who presided on the trial in the circuit court, and his refusal to grant a new trial upon the exceptions taken to said rulings; and mature deliberation thereupon had, because it seems to the court, that neither in the record and proceedings of the circuit court, nor in the rulings complained of, nor in the refusal to grant the plaintiff a new trial, is there error; it is considered by the court, that the plaintiff take nothing by his writ, and that the defendants go thereof without day, and recover against the plaintiff $ for their costs and charges by them about their defense expended, and that they have execution thereof.

13 *Plaintiffs' 1st bill of exceptions.*

UNITED STATES, ex relatione R. R. Crawford,
vs.
HENRY ADDISON *et al.*

At the trial of this case the plaintiff's counsel, having read in evidence to the court the agreement of counsel and accompanying documents or exhibits made a part hereof, (see the end of this paper,) then read to the jury the said statement and exhibits so far as the facts therein set forth relating to the election of said relator in February, 1857, and to the return made by the judges of election touching the election of Feb'y, 1859, and the appearance and claim of the relator before the common council and the affidavits made by him, and the declaration by said council that said Addison was duly elected mayor, was sworn into office, and acted as mayor for the time therein mentioned, and also relating to the record and proceedings in the writ of quo warranto therein mentioned and the writ of error as therein, and the return to the writ of diminution stated, and the proceedings of the circuit court under the mandate of the supreme court; and thereupon the defendant offered to read in evidence the proceedings of the board of common council and board of aldermen of Georgetown
in joint convention, as set forth in exhibits marked C and D,
14 made a part hereof, (see the end of this paper.) and plaintiff's
counsel objected to the admissibility in evidence of said proceedings as shown in said exhibits for any purpose in this case; but the court overruled said objections and admitted the same in evi-

dence, and therefore the plaintiffs except, and this their bill of exceptions is signed, sealed and enrolled this 29th Dec'r, 1864.

D. K. CARTTER, *Ch'f Justice.* [SEAL.]

Supreme court of the District of Columbia.

R. R. CRAWFORD *vs.* HENRY ADDISON and others. } Circuit court, November term, 1864.

In this case it is agreed that all errors in pleading are waived by each party, and under the issues joined either party may give in evidence any special matter of which notice shall be given to the other before the jury is sworn, subject to the opinion of the court as to the competency and admissibility of such evidence and as to any part of the evidence hereinafter set out.

It is further agreed that the plaintiff was mayor of Georgetown on the 4th Monday of February, 1859, and had been for two years previously, when an election for mayor of that city was held, to
15 hold office from the fourth Monday of February, 1859, for the two years then next ensuing; that at that election the judges thereof returned the plaintiff as elected, who appeared before the joint meeting of the councils and offered to take the oath of office prescribed by the charter, and did in fact, prior thereto, take the said oath before a justice of the peace for said county; but on counting the votes, the councils of said city declared the defendant was duly elected, and thereupon the defendant was sworn into office before said councils, as appears by copies of the proceedings marked A 1 and A 2, and A 3, and made part hereof, and entered upon the duties thereof and continued to do so until he was removed as hereinafter set forth; that at the next ensuing term of the circuit court of the District of Columbia the plaintiff, as relator, instituted against the defendant in said court a proceeding by quo warranto in relation to said office, as per the printed record thereof, so far as said record goes, made part of this agreement, marked A 4, including the return to the writ of diminution marked A 5; that on the trial of the issues in said cause the jury empannelled and sworn therein brought into the said court a sealed verdict, in the words and figures following, viz.:

16 CIRCUIT COURT OF THE DISTRICT OF COLUMBIA,
Circuit Court Room, Washington, D. C., Dec. 13th, 1859.

We, the undersigned jurors in the case of Crawford against Addison, have agreed upon the following verdict, viz:

That the votes received respectively by each candidate makes the vote a tie.

Respectfully,

MICHAEL R. COOMS,	ALFRED RAY,
R. M. HARRISON,	L. M. SYLVESTER,
I. GALLIGAN.	JAMES OWNER.
BENNETT HENNING,	THOS. DONOHO LARNER,
E. EDMONDSON,	JAMES McCOLGAN,
FRANCIS FITMAN,	THOS. C. YOUNG.

And the court refused to receive the same, and directed the jury to retire to their room and consider further thereof.

That the jury did then retire, as appears by the certificate marked A 5, herewith filed as par thereof, and did return to the court the verdict set out and contained in said record, and judgment of ouster was rendered thereon.

That the defendant thereupon sued out a writ of error from the Supreme Court of the United States upon the said judgment, and gave the bond set out in the declaration, as appears by said printed record.

17 That the said writ of error was dismissed and the mandate of the Supreme court was filed in the said circuit court on the 9th day of January, 1861, and further proceedings had thereon, as appears by the record in the said circuit court made a part thereof:

"Docket, Jan'y term, 1861. C. & M., 1861, 18th, 218. W. P., *ex rel.* R. R. Crawford, 410 trials, Oct., 1859, Henry Addison. Hab. fa: Ouster served by reading the within to H. T. Addison, the def't, this 18th Jan'y, 1861."

And by the writ and return marked A 6, made part hereof.

That the defendant has paid all the costs both in the circuit court and in the supreme court.

It is further agreed that on the 15th Dec'r, 1859, the proceedings were had in the councils of Georgetown which are set out and contained in the paper thereto marked B; and also on the 2d January, 1860, certain other proceedings were had in said councils, which are also set out and contained in the said paper marked C and made part hereof.

It is further agreed that the defendant was paid by the corporation of Georgetown one thousand dollars for the first year, and

18 at that rate for the portion of the second year during which he acted as mayor as aforesaid, until the 21st January, 1861, when the proceedings were had by the said councils set out in paper marked C made part hereof.

That the foregoing facts, admitted to be true, shall be taken as true, if the court shall be of opinion that the same are admissible in evidence.

R. J. BRENT, *for Pl'ff.*
JOS. H. BRADLEY, *for Defendants.*

EXHIBIT A 1.

COMMON COUNCIL CHAMBER,
Monday, March 7th, 1859.

This being the day designated by the town charter whereon to commence the first session of the legislative year of the corporation, there assembled in the chamber Messrs. Recorders Ould, Magruder, Sweeny, Libbey, Wheatley, and Riley, members of the board of aldermen; and Messrs. Wm. King, of Wm., H. L. Offutt, D. S. Shoemaker, Jno. Marbury, jr., J. M. Stake, Ant'y Hyde, Wm. H. Tenney,

Esau Pickrell, J. T. Bangs, W. L. Dunlop, and T. A. Lazenby, members elect of the board of common council. The members
19 being then present, the recorder took the chair and called the joint meeting to order. Mr. Tenney moved that all persons not entitled to seats in the chamber retire, with the exception of Mr. Hardy and Mr. Burns, reporters for papers, which motion was adopted. Mr. Tenney presented a supplementary return from the judges of elections, with the opinions of Messrs. Marbury and Ould, which the clerk had refused to present. The chair decided that no papers could be received except such as were presented by the clerk, the only party authorized by law to present them; whereupon the recorder proceeded to read the returns made by the judges of elections of the election held on the 28th February last for mayor and members of the board of common council, certifying that R. R. Crawford was elected mayor, and that the above named Messrs. King, of Wm., H. L., Offutt, D. L. Shoemaker, Jno. Marbury, jr., I. M. Stake, Ant'y Hyde, W. H. Tenney, E. Pickerell, J. T. Bangs, W. L. Dunlop, and T. A. Lazenby were elected members of the board of common council.

Mr. Magruder moved than the members elect of the board of common council be sworn in, which motion was adopted. Whereupon the aforesaid members elect of the board of common council were qualified in due form of law by taking the usual oath of office, which was administered by Robert White, esq., a justice of the peace for
20 the county of Washington. Mr. Magruder moved that the convention do now adjourn. The chair decided that the motion to adjourn was not in order. Mr. Magruder moved an appeal from the decision of the chair, which motion was seconded. Mr. Stake called for the yeas and nays, which call was sustained. Accordingly the question was taken by yeas and nays, Shall the decision of the chair stand as the decision of the convention, and decided in the negative by the following vote: Ayes, Messrs. Riley, King, Stake, and Hyde, nays, Messrs. Sweeney, Libbey, Magruder, Wheatley, Offutt, Shoemaker, Marbury, jr., Tenney, Bangs, and Lazenby. Messrs. Pickrell and Dunlop, on motion of Mr. Tenney, were excused from voting. Mr. Crawford, who was present for the purpose of qualifying, asked permission to address the meeting, and permission having been granted, he addressed it accordingly. Mr. Magruder renewed his motion that the convention do now adjourn, which was carried. The convention then adjourned, and the aldermen retired to their own chambers.

WM. LAIRD, *Sec'y.*

EXHIBIT A 2.

Joint convention of the two boards held in the council chamber Wednesday, 9th March, 1859. Present, all the members of
21 both boards, viz: Mess. Ould, Sweeney, Libbey, Magruder, Wheatley, of the board of aldermen; and Mess. King, Offut, Shoemaker, Marbury, jr., Stake, Hyde, Tenney, Pickrell, Bangs, Dunlop, and Lazenby, of the board of common council. The recorder

And the court refused to receive the same, and directed the jury to retire to their room and consider further thereof.

That the jury did then retire, as appears by the certificate marked A 5, herewith filed as par thereof, and did return to the court the verdict set out and contained in said record, and judgment of ouster was rendered thereon.

That the defendant thereupon sued out a writ of error from the Supreme Court of the United States upon the said judgment, and gave the bond set out in the declaration, as appears by said printed record.

17 That the said writ of error was dismissed and the mandate of the Supreme court was filed in the said circuit court on the 9th day of January, 1861, and further proceedings had thereon, as appears by the record in the said circuit court made a part thereof:

"Docket, Jan'y term, 1861. C. & M., 1861, 18th, 218. W. P.' *ex rel.* R. R. Crawford, 410 trials, Oct., 1859, Henry Addison. Hab' fa: Ouster served by reading the within to H. T. Addison, the def't, this 18th Jan'y, 1861."

And by the writ and return marked A 6, made part hereof.

That the defendant has paid all the costs both in the circuit court and in the supreme court.

It is further agreed that on the 15th Dec'r, 1859, the proceedings were had in the councils of Georgetown which are set out and contained in the paper thereto marked B; and also on the 2d January, 1860, certain other proceedings were had in said councils, which are also set out and contained in the said paper marked C and made part hereof.

It is further agreed that the defendant was paid by the corporation of Georgetown one thousand dollars for the first year, and

18 at that rate for the portion of the second year during which he acted as mayor as aforesaid, until the 21st January, 1861, when the proceedings were had by the said councils set out in paper marked C made part hereof.

That the foregoing facts, admitted to be true, shall be taken as true, if the court shall be of opinion that the same are admissible in evidence.

R. J. BRENT, *for Pl'ff.*
JOS. H. BRADLEY, *for Defendants.*

EXHIBIT A 1.

COMMON COUNCIL CHAMBER,
Monday, March 7th, 1859.

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Beau Pickrell, J. T. Bangs, W. L. Dunlop, and T. A. Lanenby, members elect of the board of common council. The members
10 being then present, the recorder took the chair and called the joint meeting to order. Mr. Tenney moved that all persons not entitled to seats in the chamber retire, with the exception of Mr. Hardy and Mr. Burns, reporters for papers, which motion was adopted. Mr. Tenney presented a supplementary return from the judges of elections, with the opinions of Messrs. Marbury and Ould, which the clerk had refused to present. The chair decided that no papers could be received except such as were presented by the clerk, the only party authorised by law to present them; whereupon the recorder proceeded to read the returns made by the judges of elections of the election held on the 28th February last for mayor and members of the board of common council, certifying that R. R. Crawford was elected mayor, and that the above named Messrs. King, of Wm., H. L., Offutt, D. L. Shoemaker, Jno. Marbury, jr., I. M. Stake, Ant'y Hyde, W. H. Tenney, E. Pickerell, J. T. Bangs, W. L. Dunlop, and T. A. Lanenby were elected members of the board of common council.

Mr. Magruder moved than the members elect of the board of common council be sworn in, which motion was adopted. Whereupon the aforesaid members elect of the board of common council were qualified in due form of law by taking the usual oath of office, which was administered by Robert White, esq., a justice of the peace for the county of Washington. Mr. Magruder moved that the
20 convention do now adjourn. The chair decided that the motion to adjourn was not in order. Mr. Magruder moved an appeal from the decision of the chair, which motion was seconded. Mr. Stake called for the yeas and nays, which call was sustained. Accordingly the question was taken by yeas and nays, Shall the decision of the chair stand as the decision of the convention, and decided in the negative by the following vote: Ayes, Messrs. Riley, King, Stake, and Hyde, nays, Messrs. Sweeney, Libb[illegible]er, Wheatley, Offutt, Shoemaker, Marbury, jr., Tenn[illegible]y, Messrs. Pickrell and Dunlop, on motion of [illegible] from voting. Mr. Crawford, who was [illegible] qualifying, asked permission to addre[illegible] having been granted, he addressed [illegible]r renewed his motion that the conve[illegible] carried. The convention then ad[illegible] to their own chambers.

Joint convention o[illegible]
Wednesday,
21 both board[illegible]
Wheatley, [illegible]
Shoemaker, M[illegible]
Dunlop, and L[illegible]

And the court refused to receive the same, and directed the jury to retire to their room and consider further thereof.

That the jury did then retire, as appears by the certificate marked A 5, herewith filed as par thereof, and did return to the court the verdict set out and contained in said record, and judgment of ouster was rendered thereon.

That the defendant thereupon sued out a writ of error from the Supreme Court of the United States upon the said judgment, and gave the bond set out in the declaration, as appears by said printed record.

17 That the said writ of error was dismissed and the mandate of the Supreme court was filed in the said circuit court on the 9th day of January, 1861, and further proceedings had thereon, as appears by the record in the said circuit court made a part thereof:

"Docket, Jan'y term, 1861. C. & M., 1861, 18th, 218. W. P., *ex rel.* R. R. Crawford, 410 trials, Oct., 1859, Henry Addison. Hab. fa: Ouster served by reading the within to H. T. Addison, the def't, this 18th Jan'y, 1861."

And by the writ and return marked A 6, made part hereof.

That the defendant has paid all the costs both in the circuit court and in the supreme court.

It is further agreed that on the 15th Dec'r, 1859, the proceedings were had in the councils of Georgetown which are set out and contained in the paper thereto marked B; and also on the 2d January, 1860, certain other proceedings were had in said councils, which are also set out and contained in the said paper marked C and made part hereof.

It is further agreed that the defendant was paid by the corporation of Georgetown one thousand dollars for the first year, and

18 at that rate for the portion of the second year during which he acted as mayor as aforesaid, until the 21st January, 1861, when the proceedings were had by the said councils set out in paper marked C made part hereof.

That the foregoing facts, admitted to be true, shall be taken as true, if the court shall be of opinion that the same are admissible in evidence.

R. J. BRENT, *for Pl'ff.*
JOS. H. BRADLEY, *for Defendants.*

EXHIBIT A 1.

COMMON COUNCIL CHAMBER,
Monday, March 7th, 1859.

This being the day designated by the town charter whereon to commence the first session of the legislative year of the corporation, there assembled in the chamber Messrs. Recorders Ould, Magruder, Sweeny, Libbey, Wheatley, and Riley, members of the board of aldermen; and Messrs. Wm. King, of Wm., H. L. Offutt, D. S. Shoemaker, Jno. Marbury, jr., J. M. Stake, Ant'y Hyde, Wm. H. Tenney,

Esau Pickrell, J. T. Bangs, W. L. Dunlop, and T. A. Lazenby, members elect of the board of common council. The members
19 being then present, the recorder took the chair and called the joint meeting to order. Mr. Tenney moved that all persons not entitled to seats in the chamber retire, with the exception of Mr. Hardy and Mr. Burns, reporters for papers, which motion was adopted. Mr. Tenney presented a supplementary return from the judges of elections, with the opinions of Messrs. Marbury and Ould, which the clerk had refused to present. The chair decided that no papers could be received except such as were presented by the clerk, the only party authorized by law to present them; whereupon the recorder proceeded to read the returns made by the judges of elections of the election held on the 28th February last for mayor and members of the board of common council, certifying that R. R. Crawford was elected mayor, and that the above named Messrs. King, of Wm., H. L., Offutt, D. L. Shoemaker, Jno. Marbury, jr., I. M. Stake, Ant'y Hyde, W. H. Tenney, E. Pickerell, J. T. Bangs, W. L. Dunlop, and T. A. Lazenby were elected members of the board of common council.

Mr. Magruder moved than the members elect of the board of common council be sworn in, which motion was adopted. Whereupon the aforesaid members elect of the board of common council were qualified in due form of law by taking the usual oath of office, which was administered by Robert White, esq., a justice of the peace for
20 the county of Washington. Mr. Magruder moved that the convention do now adjourn. The chair decided that the motion to adjourn was not in order. Mr. Magruder moved an appeal from the decision of the chair, which motion was seconded. Mr. Stake called for the yeas and nays, which call was sustained. Accordingly the question was taken by yeas and nays, Shall the decision of the chair stand as the decision of the convention, and decided in the negative by the following vote: Ayes, Messrs. Riley, King, Stake, and Hyde, nays, Messrs. Sweeney, Libbey, Magruder, Wheatley, Offutt, Shoemaker, Marbury, jr., Tenney, Bangs, and Lazenby. Messrs. Pickrell and Dunlop, on motion of Mr. Tenney, were excused from voting. Mr. Crawford, who was present for the purpose of qualifying, asked permission to address the meeting, and permission having been granted, he addressed it accordingly. Mr. Magruder renewed his motion that the convention do now adjourn, which was carried. The convention then adjourned, and the aldermen retired to their own chambers.

WM. LAIRD, *Sec'y.*

EXHIBIT A 2.

Joint convention of the two boards held in the council chamber Wednesday, 9th March, 1859. Present, all the members of
21 both boards, viz: Mess. Ould, Sweeney, Libbey, Magruder, Wheatley, of the board of aldermen; and Mess. King, Offut, Shoemaker, Marbury, jr., Stake, Hyde, Tenney, Pickrell, Bangs, Dunlop, and Lazenby, of the board of common council. The recorder

took the chair. Mr. Bangs, on leave, submitted the following resolution:

"*Resolved by this convention*, That the clerk of the corporation be, and he is hereby, requested to open the ballot-box of the second precinct, and ascertain whether the tally list and ballots in said ballot-box shows the reported clerical error as certified to by a majority of the judges of said 2d precinct in a supplemental return.

"*Resolved further*, That a committee of three be elected by ballot, to consist of one member of the board of aldermen and two members of the board of common council, who shall accompany said clerk for the purpose of witnessing the opening said ballot-box and examination of said tally list, or counting of said ballots, and under no circumstance shall the clerk permit the handling of said box, tally list or ballots by any one save himself; and after having satisfied themselves as to which is the correct return of the judges of the 2d precinct, the said committee to report the result of their investigation to this convention."

22 After the reading of the above resolution, the chair decided it to be out of order; when, after some discussion, it was withdrawn by Mr. Bangs.

Mr. Tenney, on leave, offered the following resolution: That the judges of election of the 2 precinct be invited in the room to present their supplementary report of the election held on 28th ult'o. Which motion was carried.

The judges of election of the 2d precinct, Mess. Wilson and Edmondson, were accordingly conducted into the chamber, and handed their supplementary report to Mr. Wm. Laird, the clerk, who received it, and then rose and said: "Mr. chairman, by order of the board of aldermen and board of common council, now present, I hand to you a paper purporting to be a supplementary return of the judges of election of the 2nd precinct of the election on the 28th February last."

Mr. Bangs now renewed his resolution, as recorded above, which was again decided to be out of order by the chair. From which decision an appeal was taken, and the ayes and nays ordered; and on the question, Shall the decision of the chair stand as the decision of this convention, it was decided in the negative by the following

23 vote: Ayes, Mess. Riley, King, Stake, Pickrell, and Dunlop; nays, Messrs. Sweeney, Libbey, Magruder, Wheatley, Offutt, Marbury, jr., Hyde, Tenney, Bangs, Shoemaker, Lazenby.

The question was then taken upon the passage of the resolution, and the ayes and nays ordered, and decided in the affirmative by the following vote: Ayes, Mess. Sweeny, Libbey, Magruder Wheatley, Offutt, Marbury, jr. Shoemaker, Hyde, Sweeney, Bangs, and Lazenby; nays, Mess. Ould, King, Stake, Riley, Pickrell, and Dunlop.

A committee was ordered to be ballotted for to act under the above resolution, consisting of one member from the board of aldermen and two members from the board of common council. Mess. Pickrell, Stake, and Dunlop, who were severally nominated, refused to serve. Mess. Magruder, from the board of aldermen, and Mess. King and

Hyde, from the board of common council, were then nominated to form the committee.

The chair appointed Mess. Pickrell and Magruder as tellers. On counting the ballots, the tellers reported that Messrs. Magruder, King, and Hyde had each received twelve votes. They were accordingly elected as members to compose the committee. Mr. Marbury moved that the supplementary report of the judges of elections of the 2d precinct of the election held on the 28th ult'o be
24 now read; which motion was carried, and the supplementary report was accordingly read by the chairman, as follows:

GEORGETOWN, *March 4th*, 1859.

The subscribers, judges of election for the 2d precinct, make this our supplemental report, in addition to that heretofore filed with the clerk, which we ask may be taken as part and in correction of the same. The judges, further reporting, state that since filing their original report of the election in the 2d precinct, they have discovered, by examining a duplicate tally of the votes taken in that precinct kept by Mr. Edmondson, one of the judges, that for mayor, R. R. Crawford, twenty tallies and three votes were extended one hundred and twenty-three, whereas the same ought to have been extended one hundred and three votes. We therefore make this our supplemental report, stating that R. R. Crawford rec'd but one hundred and three votes in the 2d precinct at the election held on Monday last, 28th ult'o, and not one hundred and twenty-three, as before reported, and beg leave to correct our first report filed with the clerk in that particular.

JNO. H. WILSON,
R. A. EDMONSTON,
Judges of Election, 2d Precinct.

25 EXHIBIT A 3.

The committee with the clerk now withdrew to carry into effect the foregoing resolution offered by Mr. Bangs and passed by the convention, and the convention took a recess.

On the return of the committee and the clerk, the chair called the meeting to order, whereupon Mr. Magruder, as chairman of the committee, read and presented the following report:

"We the undersigned, a committee appointed to investigate the returns and tickets or ballots of the second precinct, do hereby certify that there were two hundred and sixty-two votes polled, of which Henry Addison received one hundred and forty-four, (144,) R. R. Crawford received one hundred and three, (103,) and James A. Magruder, (15.)

Clerk's office, March 9th, 1859.

ANTHONY HYDE,
I. A. MAGRUDER,
WILLIAM KING, *Committee.*

WILLIAM LAIRD, *Clerk.*

After the reading of the report, Mr. Tenney offered the following resolution:

"*Resolved*, That from the report of the committee we believe Henry Addison to have received the highest vote for mayor," which was read, and on the question of its passage the ayes and nays were ordered, and the resolution was passsed by the following vote:

26 Ayes. Mess. Sweeney, Libbey, Magruder, Wheatley, King, Offutt, Shoemaker, Marbury, jr., Hyde, Tenney, Bangs, Lazenby. Nays, none. The recorder declined voting, as also Mess. Stake, Pickrell, and Dunlops.

Mr. Marbury then moved that a committee of two be appointed to wait upon Mr. Addison, and inform him of his election, and invite his presence in the chamber for the purpose of taking the oath of office before the convention.

Mess. Marbury and Tenney were nominated, and appointed to act as said committee, who retired to perform the duty assigned to them.

Mr. Addison, accompanied by the committee, appeared; the chair stated to Mr. Addison, that he had been summoned to take the oath of office as mayor of Georgetown, and as there was a magistrate present he would come forward and be sworn into office. Henry Reaver, a justice of the peace for the county of Washington, then administered the oath of office to Mr. Addison, and, thereupon, Mr. Addison addressed the committee, and on motion of Mr. Magruder, the convention adjourned.

WM. LAIRD, *Clerk*.

27 EXHIBIT A 4.

28 Supreme Court of the United States.

EX PARTE IN THE MATTER OF THE UNITED States, on the relation of Richard R. Crawford,
vs.
HENRY ADDISON.
} Original docket, No. 8.

On the petition of Richard R. Crawford for a peremptory mandamus, or for a rule to show cause.

Supreme Court of the United States, Dec. T., 1859.

In the matter of Richard R. Crawford.

Upon the filing of the petition, and the transcript of record therewith exhibited, a motion is submitted by Mr. Brent and Mr. Carlisle, of counsel for the petitioner, that a peremptory mandamus be issued, directed to the judges of the circuit court of the District of Columbia, commanding them to execute, by due process of law, the judgment of ouster, and for costs, which appears by the said record to have been rendered by the said court, in the matter of the U. S., on the relation of the said Richard R. Crawford *vs.* Henry Addison.

Or, in the alternative, that a rule be granted to show cause, at a short day to be named therein, why a mandamus shall not issue as prayed.

Dec. 27, 1859.

ROB. J. BRENT,
J. M. CARLISLE, *of Counsel, &c.*

Petition.

29 To the hon'ble the chief justice and associate justices of the Supreme Court of the U. S.

The petition of Richard R. Crawford, of the city of Georgetown, in the District of Columbia, humbly showeth:

That an election was holden in the said city of Georgetown, on the fourth Monday of February, in the year of our Lord one thousand eight hundred and fifty-seven, in pursuance of the acts of Congress entitled respectively "An act to amend the charter of Georgetown," (which was approved May 31st, 1830,) and "An act to amend the charter of Georgetown, in the District of Columbia," (which was approved Aug. 11, 1856,) "by ballot to elect some fit and proper person, having the qualifications required by law, to be mayor of the corporation of Georgetown, (aforesaid,) to continue in office two years, and until a successor should be duly elected;" and that at the said election, your petioner, having such qualifications, received the greatest number of legal votes, and was duly elected mayor of the said corporation, and thereupon took the oath of office as such mayor, and was inducted into the said office, and thereafter for two years, and until the usurpation hereinafter mentioned discharged the duties and exercised the franchises and privileges incident to the said office; which said office was, and is, an office of public trust, touching the rule and government of the said city.

4 Stat., 426.

11th Stat., 32.

Election of the petitioner in 1857, for two years, and until a successor duly elected.

Induction, &c.

That on the fourth Monday of February, in the year one thousand eight hundred and fifty-nine, another election was holden in the said city for such mayor, the said day being the time for the regular biennial election of mayor, under the acts of Congress aforesaid; and that at the said last mentioned election your petitioner received the greatest number of legal votes, and was by the returns of the judges of election declared duly elected; and in consequence of such election, and of the returns aforesaid, and of an official notice thereof, he presented himself, in presence of the two boards of the common council of the said corporation, to take the oath of office, and claimed that the said oath should be administered to him; but the said two boards, alleging that there was a mistake in the said returns, and that there was in fact a majority of one vote in favor of a certain Henry Addison, who had been the candidate against your petitioner at the said election, caused the said oath of office to be administered to the said

Election of 1859.

Petitioner elected and returned.

Refused to be admitted, and Henry Addison inducted.

Henry Addison; and the said Henry Addison in fact took pos-
30 session of the said office, to wit, on the day of March, 1859, and hath in fact ever since exercised, and still doth exercise, the privileges and franchises incident thereto.

Information. Quo war. filed.

Your petitioner further shows, that thereafter, at the next ensuing term of the circuit court of the District of Columbia, being the court then and still having jurisdiction in the premises, an information in the nature of a writ of quo warranto, upon the relation of your petitioner, was filed in the said court by Robert Ould, esquire, the attorney of the U. S. for the District of Columbia, and thereupon due process was issued by the said court against the said Henry Addison, requiring him, on a certain day, to answer and show before the said court by what warrant he claimed to exercise the said office of mayor of the corporation of Georgetown, and the said Henry Addison having appeared upon such process, and having pleaded to the said information, and certain replications having been made to the said plea, by the said attorney of the United States, certain issues were joined thereon, at the October term, 1859, of the said court, and amongst others, the issues to try whether the said Henry Addison had, as alleged by him in his said plea, received the greatest number of legal votes for mayor, at the said last mentioned election. And upon the said issue it was found by the jury, duly empanelled and sworn to try the same, that the said Henry Addison did not receive the greatest number of legal votes for mayor at the said election; and thereupon the said court rendered judgment of ouster against the said defendant, and for the costs of your petitioner, as relator in the said proceeding, to wit, on the day of December, instant.

Issue, verdict, and judgment of ouster and for costs.

Process prayed and refused, because a writ of error, &c.

Whereupon, due process of law for the execution of the said judgment, to remove the said defendant, and for the recovery of the costs aforesaid, was duly prayed of the said court; but the said Henry Addison pretending that the proceedings upon the said information in matter of law may be reviewed by this hon'ble court upon writ of error, sued out such writ of error, filed a bond, and caused a citation to be issued and served upon your petitioner, to appear and answer to the said writ of error on the return thereof, to wit, at the December term, 1860, of this hon'ble court. And thereupon the said circuit court, for the express and sole reason that such writ of error and bond operated as supersedeas, (which is expressed in their order in that behalf,) refused to execute the said judgment, or to issue any process to remove the said defendant, or for the recovery of the costs aforesaid. All which fully appears by the record, a duly exemplified transcript whereof is herewith exhibited and filed.

31 Your petitioner is advised, and humbly submits, that that this hon'ble court hath no jurisdiction of the matter of the said writ of error, and that the same must be dismissed on the return thereof. But as hereinbefore stated,

No writ of error lies.

Writ not returnable till Dec., 1860, and term of office then expiring.

the said writ is not returnable until December term, 1860, and the term of office for which your petitioner was elected as aforesaid will then be about immediately to expire.

Relief prayed by mandamus.

Your petitioner is advised that his only adequate and proper remedy is by a mandamus from this hon'ble court, directed to the judges of the said circuit court of the District of Columbia, commanding them to issue process for the execution of the judgment aforesaid. And for that the transcript of record herewith filed plainly expresses on its face the sole cause for the refusal of such process, so as distinctly to present the whole matter of law for the consideration of this hon'ble court, he prays that a peremptory mandamus may issue; or, in the alternative, that such interlocutory order may be passed to that end, as this hon'ble court may direct.

Peremptory, because the record expresses the reason of refusal of process.

Alternative.

And your petitioner will ever pray, &c.

R. R. CRAWFORD.

ROB. J. BRENT,
J. M. CARLISLE, *of Counsel, &c.*

Jurat.

Supreme court of the U. S., December term, 1859.

On this 27th day of December, 1859, in open court, personally appears Richard R. Crawford, the above-named petitioner, and made oath that the matters of fact stated in aforegoing petition are true to the best of his knowledge and belief.

WH. THOS. CARROLL, *Clk Sup. Ct, U. S.*

UNITED STATES OF AMERICA:

The President of the United States to the judges of the circuit court of the District of Columbia, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea. which is in the said court, before you or some of you, wherein the United States, at the relation of Richard R. Crawford, were plaintiff, and Henry Addison, mayor of Georgetown, was defendant, a manifest error hath happened, to the great damage of the said defendant, as by his complaint appears; we being willing that error, if any hath been. should be duly corrected and full
32 and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same, on the first Monday of December next, in said Supreme Court, to be then and there held, and that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, which of right and according to the laws and custom of the United States should be done.

Witness the Honorable Roger B. Taney, chief justice of said Supreme Court.

Issued this 14th December, 1859.

JNO. A. SMITH, *Cl'k.*

DISTRICT OF COLUMBIA:

The United States of America to Robert Ould, United States attorney for the District of Columbia, and Richard R. Crawford, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, on the first Monday of December next, pursuant to writ of error filed in the clerk's office of the circuit court of the District of Columbia, wherein Henry Addison, mayor of Georgetown, is plaintiff in error, and the United States, at your relation, are defendants in error, to show cause, if any there be, why judgment rendered against the said Henry Addison, mayor of Georgetown, in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Witness the Hon. James Dunlop, chief judge of the circuit court of the District of Columbia, this twentieth day of December, 1859.

JAS. DUNLOP.

Service acknowledged, 20 Dec'r, 1859.

ROB'T OULD, *U. S. Att'y.*

And BRENT & CARLISLE, *Att'ys for Relator.*

Know all men by these presents, that we, Henry Addison, E. M. Linthicum, Samuel Cropley, Judson Mitchell, Joseph Libbey, William H. Tenney, and Wm. H. Edes, all of Georgetown, in the District of Columbia, are held and firmly bound unto the United States of America in the full and just sum of three thousand dollars, lawful money of the United States, their certain attorney or assigns, to which payment well and truly to be made and done, we bind
33 ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this fourteenth day of December, in the year of our Lord one thousand eight hundred and fifty-nine.

Whereas lately, at a circuit court of the District of Columbia, sitting for the county of Washington, in a suit pending in said court, the United States, at the relation of Richard R. Crawford, are plaintiffs, and the said Henry Addison is defendant, the said circuit did adjudge and direct that the Henry Addison do not in any manner intermeddle with, nor in the place, office, liberties, privileges, and franchises of mayor of the corporation of Georgetown, in the District of Columbia, but that he be from henceforth wholly forejudged and excluded from exercising and using the same, and every of them; and that he, the said Henry, be taken to satisfy the United States for the usurpation thereof, and the said Richard R. Crawford, the said relator above mentioned, in this behalf recover against the

said Henry Addison the sum of dollars for his costs and charges by him in and about his suit in this behalf expended, according to the form of the statute in such case made and provided, &c.; and the said Henry Addison having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court, to reverse the judgment in the aforesaid suit:

Now the condition of the above obligation is such, that if the above-named Henry Addison shall prosecute the said writ of error to effect, and answer all damages and costs if he shall fail to make his plea good, then the above obligation to be void, otherwise to be and remain in full force and virtue.

H. ADDISON. [SEAL.]
E. M. LINTHICUM. [SEAL.]
SAM'L CROPLEY. [SEAL.]
JUDSON MITCHELL. [SEAL.]
JOSEPH LIBBEY. [SEAL.]
W. H. TENNEY. [SEAL.]
WM. H. EDES. [SEAL.]

Witness: CHAS. D. WELCH.

Approved. JAS. DUNLOP.

DISTRICT OF COLUMBIA, *sct:*

At a circuit court of the District of Columbia, begrn and held in and for the county of Washington, at the city of Washington, on the 3d Monday of October, being the seventeenth day of same month, in the year of our Lord one thousand eight hundred and fifty-nine, and of the independence of the United States the eighty-fourth.

Present, James Dunlop, chief judge; Hon'ble James S. Mor-
34 sell, Wm. M. Merrick, assistant judges; William Selden, esquire, marshal; John A. Smith, clerk.

In the records of the proceedings of the said court, among others are the follcwing, to wit:

UNITED STATES, at the relation of RICHARD R. Craw o'd, *vs.* HENRY ADDISON, MAYOR OF GEORGETOWN. } 410. Trials. October term, 1859.

Be it remembered that the said relator, by James M. Carlisle and Robert J. Brent, esquires, his attorneys, filed in court here on the fifteenth day of March, in the year of our Lord one thousand eight hundred and fifty-nine, the following affidavit of said relator, to wit:

Circuit court of the District of Columbia, January term, 1859.

In open court, on this day of March, 1859, being of the term aforesaid, , who makes oath, in due form of law, and says:

That a certain Henry Addison has recently, that is to say, on the 7th day of the present month of March aforesaid, take actual possession of the office and place of mayor of the corporation of Georgetown, an office and place of a public nature, existing under and by

virtue of the act and acts of the Congress of the United States in that behalf heretofore enacted; and that the said Henry Addison has, since the day aforesaid, hitherto claimed and exercised, and still claims and exercises the powers and privileges of the said office, without warrant and authority of law, and to the ouster and exclusion of this affiant, who is the true and rightful incumbent of the said office, as this affiant verily believes and claims.

This affiant further says, that on the fourth Monday of February last past, an election was held in the said town of Georgetown, for a fit and proper person, having the qualifications required by law, to be mayor of the corporation of Georgeton aforesaid, to continue in office two years, and until a successor is duly elected; and that such election was required so to be held by the act of Congress (4 Stat., 426) entitled "An act to amend the charter of Georgetown, approved May 31, 1830, by which act it is further declared that the person having at said election, which shall be conducted by judges of election appointed by the corporation, the greatest number of legal votes, shall be declared duly elected."

He further states, that at a previous election, holden under the same act, to wit, on the fourth Monday of February, 1857, this affiant was duly elected such mayor, and was in law and fact such mayor at the time of such election first above mentioned, holding the same, by the terms of the act aforesaid, until a successor should be duly elected.

35 He further states, that in pursuance of the act aforesaid, prior to the said election, judges of the election were appointed by the corporation, that is to say, three judges of election for each of four precincts within the said town; at each of which precincts polls were opened and holden on the said fourth Monday of February last past; and at each of which precincts on the same day, when the polls were closed, the judges of election counted the ballots which had been received by them at their respective precincts for each of the candidates for the office of mayor aforesaid, and duly and formally made and signed a certificate and return of the votes at each of the said precincts respectively; and which said certificates and returns were made and signed respectively by each and every of the judges who had holden the said election at the said precincts respectively, and were thereupon on the same day duly, and according to the invariable custom and practice, delivered to and deposited with the clerk of the said corporation, who was and is the only proper custodian thereof, under the ordinance of the said corporation; that by the said returns it appeared and appears that this affiant was duly elected such mayor as aforesaid, having received the greatest number of legal votes at the said election for the said office; that thereupon this affiant was formally notified by the said clerk, who was also the clerk of the judges of election, according to the invariable usage and practice in such cases, (for more than fifty years, as he is informed and believes,) that he, this affiant, was elected such mayor, and that he should attend and take the oath of office at the meeting of the two branches or boards of the corpora-

tion on the Monday following, to wit, the 7th day of present month of March, which notification he herewith exhibits, marked No. 1, (copied in page .)

He further states, that by the 6th section of the act of Congress, (2 Stat., 333,) approved March 3d, 1805, entitled "An act to amend the charter of Georgetown," it was directed that the said mayor, before he acts as such, "shall" make oath, before some justice of the peace, for the county of Washington aforesaid, in the presence of both branches of the said corporation, that he will well and faithfully discharge the duties of his office. And although this affiant considered the terms of this act in this respect to be merely directory, and not essential to the title to the said office, he did in fact attend at the appointed time, and in the presence of both branches of the said corporation tendered himself ready to take the said oath, and claimed that the same should be then and there administered to him by a justice of the peace of the said county then and there present and ready to administer the same. But the said two branches or boards of the said corporation, being then and there assembled as one body, and having then and there one presiding officer, proceeded in defiance of law, and without any color of right or jurisdic-
36 tion, (as affiant is advised and believes,) to inquire into the correctness of the returns, which had so as aforesaid been made by the judges of election, and refused to abide by the same, and refused to permit this affiant to take the oath aforesaid in their presence, as he claimed the right to do; and on the 9th day of March, 1859, declared that the before mentioned Henry Addison had been duly elected mayor of the said corporation, and then and there suffered and permitted the said Henry Addison to take the oath of office as such mayor.

And this affiant further says, that having been warned that such proceedings as aforesaid would probably take place, and that there might possibly, in consequence thereof, be occasion for the exercise of the powers and discharge of the duties of the said office in the preservation of order, he did in fact take the oath of office as mayor of the said corporation, before a justice of the peace of said county; believing that the said 6th section of the act of 1805, if in force at all, was merely directory; and he herewith exhibits the certificate of such oath, marked No. 2, (copied in page .) But the said Henry Addison, immediately after the proceedings aforesaid, assumed to act as mayor, and (the said proceedings having having taken place in the night) on the next morning took possession of the said office, and of all the books, papers, documents, and records thereof, and forthwith proceeded to exercise the powers, privileges, and jurisdictions belonging to the said office, and still exercises the same.

And this affiant further says, that the following circumstances are alleged by the said Henry Addison and those who support him in the premises, as the pretext for the said unlawful proceeding, that is to say, at the said election there were there candidates for the said office of mayor, to wit, the said Henry Addison, one James A. Magruder, and this affiant. According to the returns aforesaid, this affiant

received 551 votes, the said Henry Addison, 532 votes, and the said Magruder received 49 votes, the total being made up of all the votes returned from all the said precincts. That, by the return made by the judges at the 2d precinct, it appeared that this affiant there received 123 votes, the said Henry Addison received 144 votes, and the said Magruder received 15 votes. That after the polls had been closed, and the return and certificate duly signed and made by all the judges at said precinct, as hereinfore stated, and after the ballot-boxes, containing or purporting to contain the ballots, had been returned to, and deposited in. the proper office of the said corporation, and without having access thereto, to wit: on the 9th day of March, instant, (being 9 days after the said returns had been made,) two of three judges of the election at the 2d precinct, out of the presence of the third judge, and without his concurrence or assent, made up and signed another and different return of the said election,
37 a copy of which is herewith exhibited, marked No. 3, (copied in page ,) whereby the said two judges represented that this affiant had in fact received at said precinct, not one hundred and twenty-three votes, (as the same two judges, together with the third, had duly and formally certified and returned as aforesaid,) but only one hundred three votes; whereby the said Henry Addison, if all the votes received were legal votes, would be elected mayor by a majority of one vote; and upon the pretext that an error in computation had occurred at said precinct, and that the same could be corrected in manner aforesaid, by two of the three judges, the proceedings, hereinbefore stated took place in that behalf.

This affiant, leaving matters of law to be decided by this court, states the fact, of which he is credibly informed by parties present and acting in the premises, and which he verily believes, that the said original and lawful return, signed by all the judges, were made up immediately, upon the counting and distribution of the ballots, all the judges being present, and the result being then and there verified by the judges and their clerk. This affiant was not present then or at any time during the said election, or on the making up of said return, in the room where the judges sat, and where the ballot-boxes were, and therefore can state nothing of his own knowledge respecting the number of votes actually received; and he is content if, upon due and legal investigation by a tribunal having jurisdiction and the means of ascertaining the truth, such alleged error shall be ascertained, that it shall be corrected. But he states, upon information and belief, that the election at the said precinct was so conducted that there was abundant opportunity for the commission of frauds upon the said election, without the wilful participation or connivance of any said judges, two of whom (to wit, the two who signed the pretended supplemental return) were opposed to this affiant, and were partizans of the said Henry Addison; and he verily believes that frauds were there perpetrated to his disadvantage, and that the said pretended error is founded in fraud, the particulars of which can only he reached by a proceeding in this court.

And this affiant further says, that at the said joint meeting of the

said two branches or boards, the said pretended supplemental return of the two judges having been received from them, and not the official channel, the said meeting. acting as one body, did appoint a committee of three persons, one of whom was the said defeated candidate, James A. Magruder, to proceed to the paper office of the corporation, and there inspect the tally papers and the ballots, and to report to the said meeting the result of such inspection; and on such report being made, the said meeting assumed to receive and judge of the same, as evidence that the said Henry Addison was duly elected, and did thereupon set aside the return, so as aforesaid made,
38 in favor of this affiant, and did adopt the said pretended supplemental return made by two of the judges, and did thereupon assume to declare the said Addison duly elected as aforesaid.

This affiant is advised that the facts heretofore stated are sufficient foundation for a rule upon the said Henry Addison to show cause why an information, in the nature of a quo warranto, shall not be filed against him in the premises; and that upon such proceeding on his relation, your honors will not look behind the returns, but will leave the said Henry Addison to institute for himself such proceedings in this court as he may think advisable for that end. But this affiant states that he verily believes that on any such proceedings, whether at his instance (if the same competent) or at the instance of the said Addison, he, this affiant, will be able to show, as on credible information and belief avers, that the whole election at the said precinct was so conducted as that the whole vote thereof ought to be rejected, whereby the total majority in favor of this affiant would be 40 votes. He says, on such information and belief, that during the election at the said precinct, one of the judges was absent for a considerable time, leaving two judges only to conduct said election. That both the said Addison and the said Magruder (who were combined to defeat this affiant) were in the said room, where the said judges and the ballot-boxes were during the election; that there was inordinate drinking of spirituous liquors in the said room, or a room opening into it; and that one of the judges of election who undertook to carry the ballot-box to the proper office of the corporation, took it first to his own shop, and that he was seen drunk and vomiting in the streets on the night of the election and shortly after the polls were closed; and, finally, that even if the said pretended error in computation did take place, whereby, retaining the vote of the said precinct, the said Addison would appear to be elected by one vote, yet that divers and sundry illegal votes were received and taken at divers precinct for the said Addison, which being rejected, this affiant would still be elected, be the returns so as aforesaid made in his favor, and which returns, he is advised, could only be corrected by a proceeding in this court.

RICHARD R. CRAWFORD.

Sworn to in open court.
Test:
15th March, 1859.

JNO. A. SMITH, *Clk.*

Exhibits referred to in the aforegoing affidavit, page , are not on file.

Upon the back of the aforegoing affidavit the following order of the court, on motion of the said relator, by his attorneys, was made:

39 Upon the within affidavit of R. R. Crawford and the affidavit Wm. Clabaugh, and on mo., it is, this 15th day of March, 1859, ordered, that the U. S. att'y for the Dist. Col'a have leave to file an information in the nature of a quo warranto, against the within named Henry Addison, and that on filing the same, the writ of venire facias ad respond. issue, returnable to the first day of the next term of this court.

By order of court.

Test: JNO. A. SMITH, *Clk.*

And whereupon, on the day and year aforesaid, U. S. att'y for the District of Columbia files in court here the following information, to wit:

UNITED STATES OF AMERICA, ex relatione Richard R. Crawford.
vs.
HENRY ADDISON.

DISTRICT OF COLUMBIA, *Washington county, to wit:*

Robert Ould, attorney of the United States for the district of Columbia, who sues for the United States in this behalf, comes here before the circuit court of the District of Columbia, this 15th day of March, in the year one thousand eight hundred and fifty-nine, at the January term of the said court, and upon the relation of Richard R. Crawford, of Georgetown, in the county aforesaid, and by leave of the said court, gives the court here to understand and be informed:

That the office of mayor of the corporation of Georgetown, in the district and county aforesaid, hath been for a long time heretofore, to wit, for the space of fifty years last past and upwards, and still is, a public office and an office of trust, to wit, at said Georgetown, in the county aforesaid, and that a certain Henry Addison, of said town and county, without any legal warrant, grant, right, or authority whatsoever, hath, for the space of seven days now last past and more, held, used, and executed the said office of mayor of the corporation of Georgetown, and without any legal warrant, grant, right or authority whatsoever, still doth hold, use and execute the said office, to wit, at the town and county aforesaid; and that the said Henry Addison, for and during all the time last above mentioned, without any legal warrant, grant, right or authority whatsoever, at the town and county aforesaid, hath claimed, and still doth claim, to be the mayor of the corporation of Georgetown aforesaid, and to have use, and enjoy all the liberties, privileges and franchises to the office of mayor of the corporation of Georgetown aforesaid belonging appertaining; which said office, liberties, privileges and

franchises, he, the said Henry Addison, for and during the whole time last above mentioned, upon the said United States hath usurped, intruded into and unlawfully held, and still doth usurp, intrude into and unlawfully hold, to wit, at the town and county aforesaid, in contempt of the authority of the said United States and against their peace and dignity.

Wherefore the said attorney prays advice of the court here in the premises, and due process of law against the said Henry Addison in this behalf, to answer to the United States, by what warrant he claims to hold, use, and exercise the office, liberties, privileges, and franchises aforesaid.

ROB'T OULD,
U. S. Attorney for the District of Columbia.

And thereupon, on the 18th day of March, 1859, the United States writ of venire facias ad respondendum was issued, directed to the marshal of the district of Columbia, in the words and of the tenor following, to wit:

DISTRICT OF COLUMBIA, *to wit:*

The United States of America to the marshal of the district of Columbia, greeting:

You are hereby commanded that you cause to come Henry Addison, if he shall be found within the county of Washington, that he be and appear before the circuit court of the District of Columbia, to be held for the county of Washington, on the first Monday of May, to wit, the second day of the same month, 1859, on that day to answer to a certain information in the nature of a quo warranto exhibited in court here against him by the United States of America. Hereof fail not at your peril, and have you then and there this writ.

Witness the honorable James Dunlop, chief judge of the circuit court, the 15th March, 1859.

Issued the 18th day of March, 1859.

JNO. A. SMITH, *Cl'k.*

At which mentioned first Monday of May, in the year of our Lord one thousand eight hundred and fifty-nine, being the day of the return of the aforegoing writ, come into the circuit court here the said relator, by his attorneys aforesaid, and the marshal of the district of Columbia aforesaid, to whom the said aforegoing writ was in form aforesaid directed, makes thereof to the court here thus endorsed, to wit:

WILLIAM SELDEN, *Marshal.*

And the said Henry Addison being called, appears in court here, by John Marbury, sr., Joseph H. Bradley, sr., and Henry
41 Winter Davis, esquire, his attorney's; and thereupon, on motion of the said relator, by his attorneys aforesaid, it is ruled by the court here that the said Henry Addison answer to the information in nature quo warranto, so as aforesaid filed against him.

And on said day the said Henry Addison, by his attorneys aforesaid, filed in court here the following answer, to wit:

And the said Henry Addison comes and defends the *the* wrong and injury, by John Marbury, his attorney, having heard the said information, complains that he is by color thereof greviously used and disquieted, and this unjustly, because protesting that the said information and the matters therein contained are not sufficient in law, and that the said Henry Addison is not bound by the law of the land to answer the same; yet, for pea iu this behalf, the said Henry Addison says that by a certain of assembly of the State of Maryland, passed at Nov. session, in the year 1789, and entitled "An act to incorporate Georgetown, in Montgomery county," (being chapter 23,) Georgetown, now in Washington county, District of Columbia, was incorporated and constituted a body politic, in fact and in name, by the name of the mayor, recorder, aldermen, and common council of Georgetown; and to perpetuate the succession of the said corporation, it was, in and by the said act of assembly, among other things, provided that the mayor, recorder, aldermen, and council should assemble at some convenient place in the town, on the first Monday in January, in the year 1731, and on the same day forever thereafter, and shall elect, by a majority of votes of such of them as shall be present, one of the aldermen of the said town for the time being to be mayor of the said town for the ensuing year. That by a certain other act of assembly of the same State, passed at the Nov. session, in the year 1737, entitled "An act supplement to the act entitled an act to incorporate Georgetown, in Montgomery county," (being chapter 56,) the said original act of incorporation was amended, and it was provided that the recorder, aldermen, and common council of the said town should thereafter elect the mayor of the said town from the citizens at large; that afterwards, by an act of Congress, entitled "An act to amend the charter of Georgetown," approved March 3d, 1805, it was provided that the said corporation of Georgetown should be divided into two branches, the first to be called the board of aldermen, the second to be called the board of common council; that on the first Monday of January next thereafter, and on the same day annually thereafter, the said corporation shall, by a joint ballot of the said two branches present, choose some of it and proper person to be mayor of the said corporation, to continue in office one year; and by the sixth section of the said act it was further provided that the said mayor, or before he acts as such, shall make oath before some
42 justice of the peace for the county of Washington, in the presence of both branches of the said corporation, that he will well and faithfully discharge the several and respective duties of his office. That by a certain other of Congress, entitled "An act to amend the charter of Georgetown," approved the 31st day of May, in the year 1830, it was further provided that on the 4th Monday in February next thereafter, and on the same day biennially thereafter, the citizens of Georgetown, qualified to vote for members of the two boards of the corporation of the said town, shall by ballot elect some fit and proper person, having the qualifications then required by law,

to be mayor of the corporation of Georgetown, to continue in office two years, and until a succession is duly elected, and the person having at said election, which shall be conducted by judges of election appointed by the corporation of Georgetown, to continue in office two years and until a successor is duly elected, and that the person having at said election, which shall be conducted by judges of election appointed by the corporation, the greatest number of legal votes shall be declared duly elected; and in the event of an equal number of votes being given to two or more candidates, the said two boards, in joint meeting, shall elect the mayor from the persons having such equal number of votes. That by a certain other act of Congress, entitled "An act to amend the charter of Georgetown, in the District of Columbia," approved the 11th day of August, in the year 1856, in was further provided that it shall be the duty of the said corporation to establish at least two election precincts, within the limits of the said corporation of Georgetown, and to appoint not less than three judges of election for each precinct, and to adopt such other regulations as may be necessary to give full force and effect to the provisions contained in said act in that behalf, and all other acts or parts of acts in conflict with the said last mentioned act was thereby repealed; that in order to carry into effect the provisions of the said last mentioned act of Congress in said behalf, the said corporation, by an ordinance entitled "An ordinance dividing the town into four election precincts," approved the 24th day of January, in the year 1857, provided that Georgetown aforesaid should be divided into four election precincts, and further proceeded to distribute, mark, and bound the same by certain specified metes and bounds; and also provided that annually thereafter, on the first Monday in January, the said two boards in joint ballot, should elect three fit and suitable persons for each of the aforesaid election precincts, residents of the precincts for which they may be elected, who shall act as judges, according to the regulations prescribed by law, of all elections to be held within said precincts, respectively, during the year for which they shall be elected, and that the said judges be authorized to hire suitable rooms in each precinct to hold all elections in, that may be ordered by the authorities of the town. That by a certain other ordinance of the said
43 corporation of date anterior to the last mentioned ordinance, entitled "An ordinance proving for the appointment of one clerk in lieu of the present clerk, treasurer, and assisstant clerk of this corporation, defining his duties, regulating the receipts and expenditures of the corporation, and for other purposes," approved the *the* 2d day of August, in the year 1856, it is made the duty of the said clerk "to take charge of and safely keep the returns of elections of the two boards, and of all other officers elected by the people of the said town;" that on the first Monday in the 1859, the said two boards of the corporation of Georgetown in joint meeting elected three judges for each of the said four election precincts respectively residents of the precincts for which they were elected; that in pursuance of the said acts of incorporation of the said town, and the said acts of the said corporation, an election was held in each of the said four

election precincts of the said town on the fourth Monday of February, in the year 1853, for the choice of a fit and proper person, having the qualifications required by law, to be mayor of the corporation of Georgetown aforesaid, to continue in office two years, and until a successor should be duly elected; that at the said election this defendant, having all the qualifications required by law to be mayor of the said corporation, received the greatest number of legal votes cast at the said election, and was duly elected mayor of the said town; that this defendant afterwards, on the ninth day of March next, after the date of the said election, appeared before the board of aldermen and board of common council of the corporation of Georgetown in joint meeting assembled, and then and there, in the presence of the said two branches of the said corporation, made oath before a justice of the peace for the county of Washington, in the District of Columbia, well and faithfully to discharge the duties of the said office of mayor of the said corporation; and the said defendant says that since the said ninth day of March, in the year last aforesaid, and up to the present time, he has used, performed, and exercised, and still use, perform, and exercise, and that justly and of right, all the privileges and duties of the said office of mayor of the corporation of Georgetown, and hath claimed and still doth claim to have, use and enjoy all the liberties, privileges, and purchises to him belonging as mayor of the said town, by virtue of the aforesaid acts of incorporation and ordinances, as it was and is lawful for him to do; that without this, that he, the said defendant, hath since the day last aforesaid claimed, used, and exercised the powers and privileges of the said office of mayor of the corporation of Georgetown aforesaid without warrant or authority of law; and also without this, that the said relator, Richard R. Crawford, received the greatest number of legal votes at the said election for the said office, and was duly elected mayor of the corporation of Georgetown, and is the true and rightful incumbent of the said
44 office, and hath been since the day and year last aforesaid, and now is unjustly and unlawfully ousted and excluded from the said office by the defendant; and also without this, that the judges of the election held on the fourth Monday of February aforesaid, in the said four election precincts, did, by any returns by them made and lodged with the clerk of the corporation aforesaid for safe-keeping, declare that the relator, the said Richard R. Crawford, was at said election chosen mayor of the said corporation; and also without this, that the clerk of the corporation of Georgetown, since the passage of the said act of Congress of the 11th day of August, in the year 1856, and the said ordinance of the corporation of Georgetown of the 24th day of January, in the year 1857, has been, was, or could be clerk to the judges of the elections in said town, and as such authorized to compute the number of votes received by the persons voted for in the said four separate election precincts, upon the separate returns made to him by the judges of said precincts, and to ascertain which of the candidates had received the greatest number of legal votes of the people of the said town, voting in the said four precincts, and to certify the fact of his election to the person who

may have received such majority of legal votes; and without this, that the clerk of the corporation did in fact compute the returns made to him by the judges of election of the votes received by the several candidates in said four precincts, and did certify to the relator, the said Richard R. Crawford, that he was at the said election chosen mayor of the corporation of Georgetown aforesaid; and also without this, that there was in fact any irregularity, evil practice, or produced in the conduct of the said election in any of the said four recincts, and particularly in the conduct of the said election in the aid second election precinct, as charged by the relator, the said Richard R. Crawford, in the said information; and without this, that this defendant hath usurped the said liberties, privileges, and purchases upon the said people of the said town and corporation, in the manner and form as by the said information is above supposed; all which several matters and things he, the said defendant, is ready to verify as the court shall award; whereupon he prays judgment, and that the aforesaid liberties, privileges, and franchises in form aforesaid claimed by him, the said defendant, may, for the future, be allowed to him, and that he may be dismissed and discharged by the court hereof, and from the premises aforesaid.

JNO. MARBURY, *for Def't.*

Thereupon further process of and upon the premises aforesaid, between the parties of aforesaid, by consent of the said parties, by their attorneys aforesaid, and by order of the court here, the said cause is continued until the third Monday of October next.

45 And now, to wit, the said third Monday of October, in the year of our Lord one thousand eight hundred and fifty-nine, comes again into court here, as well the said relator, by his attorneys aforesaid, as the said respondent, by his attorneys aforesaid, and the said relator, by his attorneys aforesaid, files in court here the following replication, to wit:

Replications.

THE U. S., ex-relat. RICHARD R. CRAWFORD
vs.
HENRY ADDISON.

And the said Robert Ould, esquire, attorney of the United States for the district aforesaid, who for the said United States in this behalf prosecutes, being present here in court, and having heard the said plea of the said Henry Addison, by him above pleaded in bar. read, now, for the said United States, saith that for anything by him therein alleged the said United States ought not to be barred from having their aforesaid information against him, because protesting that the said plea and the matters therein contained are not sufficient in law to preclude the said United States from having their aforesaid information against him for replication; nevertheless, in this behalf, the said attorney for the said United States saith:

1st. That true it is that the several acts of assembly and acts of Congress which are in part recited in the said plea were passed and approved at the times respectively in the said plea in this behalf stated; and true it is that the said several ordinances in the same plea in part recited, were enacted by the said corporation of Georgetown, and approved at the times in the same plea in this behalf stated; and true it is that on the first Monday in the year 1859 the two boards of the corporation, in joint meeting, elected three judges for each of the four election precincts in the said town, respectively, residents of the precincts for which they were elected; but that an election was not held in pursuance of the said act and amended acts of incorporation of the said town, in the said plea so as aforesaid in part recited and above mentioned; and of the said acts of the said corporation, in each of the said four election precincts of the said town on the fourth Monday of February, in the year 1859, for the choice of a fit and proper person, having the qualifications required by law, to be mayor of the corporation of Georgetown aforesaid, in manner and form as the said Henry Addison hath above in his said plea alleged; and this the said attorney for the said United States prays may be inquired of by the country.

2d. And the said attorney for the United States, &c., further says that the said supposed election in the said plea alleged to have been holden on the fourth Monday of February, in the year 1859, 46 was not conducted by the judges of election appointed by the said corporation; and this the said attorney prays may be inquired of by the country.

3d. And the said attorney for the United States further says that the said supposed election in the said plea alleged to have been holden on the fourth Monday of February, in the year 1859, was not at the second election precinct in the said town, being one of the four election precincts in the said plea mentioned, conducted by the three judges of election appointed by the said corporation for the said precinct; and this the said attorney prays may be inquired of by the country.

4th. And the said attorney for the United States further says that at the said supposed election in the said plea alleged to have been holden on the fourth Monday of February, in the year 1859, the said defendant had not the qualification required by law to be mayor of the said corporation of Georgetown; and this the said attorney prays may be inquired of by the country.

5th. And the said attorney for the United States further says that at the said supposed election in the said plea alleged to have been holden on the fourth Monday in February, 1859, the said defendant had not the greatest number of legal votes cast at the said election, and was not duly elected mayor of the said town; and this the said attorneys prays may be inquired of by the country.

6th. And the said attorney for the said United States further says that at and after the closing of the said supposed election in the said plea alleged as aforesaid, the said defendant was not returned by the judges of the said election as having the greatest number of legal

votes cast at said election for mayor of the said corporation; but another person, to wit, a certain Richard Crawford, was by the said judges, at and immediately after the closing of the said election, returned and certified by the judges thereof as having the greatest number of legal votes cast at said election for mayor of the said corporation; which said returns were made to and deposited with the clerk of the said corporation, who, by the ordinance of the said corporation in that behalf, approved the second day of August, in the year 1856, and by the invariable usage and custom of the said corporation for more than fifty years preceding and up to the said above mentioned election, was the righful and only custodian of the said returns and certificates, and to whom the same ought rightfully to be made; and that the said returns and certificates having been so as aforesaid made, returned, and deposited, the said defendant was not and could not be lawfully sworn and admitted into the said office of mayor. All and singular which matters and things he, the said attorney, is ready to verify and prove as the court shall award.

Wherefore he prays judgment, &c., and that the said defendant may be convict of the premises above charged upon him, and that he may be absolutely prejudged and excluded of and from the said office, &c., so by him claimed in manner aforesaid, &c.

47 7th. And the said attorney for the United States further says that at the said supposed election so as aforesaid pleaded and alleged by the said defendant, that is to say, at the second election precinct aforesaid, there were in fact divers and great irregularities, evil practices, and frauds, whereby the said supposed election, at the said second precinct, was wholly vitiated and made of none effect; and this the said attorney is ready to verify and prove, when, &c., wherefore, &c.

8th. And the said attorney for the United States in fact further says that after the closing of the polls at the said supposed election, by the said defendant above pleaded and alleged, and after the votes had been counted, and after the returns thereof, at the said several precincts, had been duly made and certified as aforesaid, by the judges so as aforesaid appointed by the said corporation, the ballot-boxes which contained the ballots which had been cast by the voters for mayor at said election were not duly guarded and secured, and were not duly returned and deposited in the office of the clerk of the said corporation, but were exposed to frauds and to be tampered with, and were carried about to private places, and out of the charge of the judges of election, or of any officer or person authorized to have the charge and custody thereof, before the same were lodged and deposited with the clerk of the said corporation; and that thereafter the said returns and certificates, so as aforesaid made and returned, were changed and altered, and duplicated, by persons other than the judges of election, upon which said changed, altered, and duplicated returns, and not otherwise, the said defendant claimed and assumed to be mayor as aforesaid, and took possession of the said office; and this the said attorney is ready to verify, when, &c., wherefore he prays, &c.

9th. And the said attorney for the said United States further says that at the said supposed election, above pleaded and alleged by the said defendant, and at the said second election precinct, the said defendant then being candidate for the said office of mayor, was, during the said election, admitted into the room where the ballots of the votes for the said office of mayor were received and deposited, and there remained alone for a long space of time, with the persons who were conducting the said election; and that one of the judges appointed by the said corporation to hold the said election at the said precinct was absent therefrom for a long space of time, to wit, for the space of one hour, during the holding of the said election; and that divers other irregularities and evil practices occurred and took place in the holding of the election aforesaid, at the said second precinct, whereby the said election, at the said second precinct, was
48 wholly vitiated and made of none effect; and this the said attorney is ready to verify, &c., when, &c., wherefore he prays, &c.

R. OULD, *Att'y for U. S.*
CARLISLE, *of Counsel.*

And now again, at the said last mentioned term of said court comes again into court here the said respondent, by his attorneys aforesaid, and files the following joiner and demurrer to the foregoing replication of the said relator:

As to the said 1, 2, 4, 5, replications of said relator, said respondent joins issue, and on 3d replication rejoinder is filed, to wit:

And the said Henry Addison, as to the plea of the said United States, in form aforesaid thirdly above pleaded in reply, (protesting also that the said plea and the matters therein contained are not sufficient in law, as the said United States have in their said plea thirdly above pleaded in reply, in that behalf alleged.) yet for plea, by way of rejoinder in this behalf, the said Henry Addison says that the said election, in the said second precinct, in the said plea mentioned, was in fact conducted and held by a majority of the judges of the election appointed by the said corporation for the said precinct, and that the said Henry Addison was elected mayor of the said city of Georgetown, in manner and form as the said Henry Addison hath above in said plea in that behalf alleged; without this, that the said Henry Addison, on, &c., in manner and form aforesaid as the said United States have in their said plea thirdly above pleaded. in reply in that behalf aforesaid alleged; and this the said Henry Addison is ready to verify; wherefore he prays judgment that the said office so claimed and held by him as aforesaid may be allowed and adjudged to him, and that he may be dismissed and discharged by the court here of and from the premises charged upon him in form aforesaid.

And so as to the 7th, 8th, and 9th replications, demurrer is entered in form following, to wit:

And the said Henry Addison, as to the said plea of the United States, by them in form aforesaid sixthly pleaded as above, in reply says, that the said plea and the matter therein contained, in manner

and form as the same are above pleaded and set forth, are not sufficient in law, and he need not, nor is he obliged by the law of the land, to answer thereto by way of rejoinder; and this he is ready to verify; wherefore, and for want of a sufficient replication in this behalf, the said Henry Addison prays judgment, and that the said office so claimed and held by him as aforesaid may be allowed and adjudged to him; and that he may be dismissed and discharged by the
49 court here, of and from the premises charged upon him in form aforesaid.

JOS. H. BRADLEY, *Att'y for Def't.*

The sixth replication withdrawn by leave of court, on motion of relator, by his attorneys aforesaid. Demurrer to the seventh, eighth, and ninth replications. Judgment was confessed by the United States.

Rejoinder to third replication withdrawn, and demurrer and joinder in demurrer to third replication. Judgment for respondent on demurrer to third replication.

Whereupon, for trying the issues aforesaid, it is ordered by the court here that twenty persons from the panel of petit jurors returned to the court by the marshal of the district aforesaid be drawn, by ballot, according to law in such case made and provided. And twenty persons being so drawn, and a list of their names being furnished each of the parties, and the counsel of the parties having each stricken out four persons from the said lists, thereupon the remaining twelve being called, come, to wit: 1. Michael R. Coombes. 2. Thomas Galligan. 3. Samuel R. Sylvester. 4. Thomas Fitnam. 5. Richard M. Harrison. 6. James McColgan. 7. Elijah Edmonston. 8. James Owner. 9. Bennett Henning. 10. Thomas D. Larner. 11. Thomas E. Young. 12. Alfred Ray.

Who being empanelled and sworn to say the truth in the premises upon their oath, do say that they find for the respondent on the issues joined on the first, second, and fourth replications, and that they find for the relator on the issue joined on the fifth replication.

Whereupon all and singular the premises being seen and fully understood by the court here, and in particular, the matters above put in issue and tried by the country, being seen and fully understood by the court here, it appears to the court here, from the verdict aforesaid, in form aforesaid, given against the said Henry Addison, that the said Henry Addison hath usurped, and still doth usurp, upon the United States, the place, office, liberties, privileges, and franchises of mayor of Georgetown, in the county of Washington, in the District of Columbia, in manner and form as by the said information is above charged upon him: Therefore it is considered by the court here that the said Henry Addison do not in any manner intermeddle with or concern himself in and about the office, liberties, privileges, and franchises aforesaid, but that he be absolutely prejudged and excluded from ever exercising or using the same, or any of them, in future. And the said Henry Addison, in order to satisfy unto the United States for and on account of the usurpation aforesaid,

50 be taken, &c.; and that the said Richard R. Crawford, the relator above named in this behalf, recover against the said Henry Addison the sum of $, for his costs and charges by him expended and laid out in and about his suit in this behalf, according to the form of the statute in such case made and provided, and that he have thereof execution, &c., and the said, in mercy, &c.

Test: JNO. A. SMITH, *Cl'k.*

And thereupon the said defendant prays a writ of error, and tenders to the court here a certain bond and citation, (copied on pages 2 and 3,) and claims that the said judgment of ouster be superseded pending such writ of error.

And the said attorney for the United States prays process of this court to enforce the said judgment of ouster, without delay or supersedeas. And the said relator prays a writ of fieri facias against the goods and chattels of the said defendant, for the recovery of his costs aforesaid. But the court being of opinion that the said judgment is superseded by the filing of the bond aforesaid, refuses to grant any process to enforce the same.

Test: JNO. A. SMITH, *Cl'k.*

Before the jurors aforesaid retired from the bar of the court here the said defendant, by his attorneys aforesaid, filed in court here the following bills of exception, to wit:

THE UNITED STATES, on the relation of R. R. Crawford,
vs.
HENRY ADDISON.

On the trial of this cause, the defendant, to maintain the issue on his part joined, gave in evidence certain proceedings of the two boards of common council and board of aldermen of Georgetown as follows: (here insert all the proceedings of said boards relating to the appointment of the judges of the election and the filling the vacancy for the year 1859, copied on page ;) and also the publication of the notice of the election in that town for the 4th Monday in February, 1859, as follows: (here insert it, copied on page ;) and by the clerk of said corporation, gave evidence to show that for more than fifty years past it has been the usage in said town for the judges of the election, after the close of the polls, to return to the said clerk the ballot-boxes locked, and to give him the key thereof, and for him, the clerk, to place them in the fire-proof of his office until it should be necessary for him to open them and take out the certificates of the result of the election, in order to notify the parties designated in said certificates as having received the highest number of votes, and then to relock the said ballot-boxes and put them in the same place of safety; that on the evening of the 4th Monday of February, 1859, he was at his office, and received from the judges of the
51 several precincts in said town the four ballot-boxes, (being the ballot-boxes from the 4 election precincts in said town,) which he now produces in court here; that they were all locked when

he so received them, and he at the same time received from the respective judges the keys of the respective boxes, except that for the second precinct, which was delivered to him the next morning by one of the judges of that precinct; that on the same evening in which he received the said boxes, and immediately after receiving them, he put them, without them having been opened or touched by any other person, into the said fire-proof, where they have remained until brought by him to this trial; that he put the keys of said boxes in a secret place known only to himself; that three other persons, only two of whom were officers of the corporation, and the third the son of one of those officers, could at any time have had access to the place where said boxes were kept; that prior to the 7th day of March, 1859, and in order to give notice of their election to the persons designated by the said judges as elected at said election, he opened the said boxes and took from each the certificates made out and returned by the judges of election of each several precinct, relocked the boxes and put away the keys, and has held and kept the said certificates respectively in his exclusive possession to this day, and now produces them here in court; that none of the said boxes except the said box from the said 2d precinth has been opened to this day, on any other occasion; that when he opened the said boxes respectively, as to each and every of them, he found at the bottom of the box the original ballots esteemed by the judges in each election precinth, strung on a string, and above them the list of persons assessed, which had been furished by him to the said judges respectively, and the return or certificate of the judges above, third next to the top; besides these two papers, he found, in the 2, 3, and 4 precinths a list of names of the voters where votes had received, apparently in the order in which they were received, and the original list of assessed voters furished by him to the first precinth had checks in pencil opposite certain names, as it now appears, indicating that that person had voted, and on it also are added then as they now appear in pencil, a number of names which are not in the original assessment list. Besides which papers, there was in each box, respectively, a tally list of the names of the several respective candidates at said election, with tallies of the votes received set opposite each name, and the amount or number for each carried out in figures into a single column, (here insert said papers marked Nos. copied on page .) In the first precinth the certificate of the judges was written at the foot of the said tallies paper—a list in the 2 and 3 precincts—it was on a separate paper. In the fourth precinct, at the foot of the register of voters kept the judges.

52 He further gave in evidence the certificate of the judges of the 2d precinct as follows, (here insert it, copied on page ;) and then, by the said clerk of the said corporation, further gave evidence to show that, pursuant to custom, after he had received and examined the said certificates, now shown to the court and jury, (by which it is admitted, it appears the relator had received 551 votes, and the defendant 532 voters,) he gave notice to the relator as follows, (here insert the notice copied on page ;) that the councils assembled on

the said 7th day of March, 1859, and he read from the minutes of the proceedings of said meeting as follows, (here insert the same, copied on page ;) and also from the minutes of the proceedings of the 9th day of March, 1859, as follows, (here insert the same, copied on page ;) and the said clerk further testified, that from the time he received the said ballot-box and the key thereof respectively, until they were so produced by him before the said council, he had retained the exclusive possession of the said key, and the said ballot-box had remained he had placed it in the vault or fireproof of his, the said office, and when opened by him before the said councils, appeared to be in the same condition it was in when he opened it to take out the said certificate; that by the direction of the councils, and in the presence of the committee for that purpose appointed by them as aforesaid, he, the said clerk, took out the papers from the said box, and took off from the string, which has been run through them by the said judges, each separate ballot and replaced it in the box, and there were 262 ballots, neither more or less, for mayor, of which the defendant had 144, the relater 103, and Mr. Magruder 15; that the same were then compared with the tally list found in said ballot-box, and returned by said judges, and were found to correspond precisely with said tallies, to wit: there were 28 tallies and 4 scores for Mr. Addison, 20 tallies and 3 scores for Mr. Crawford, and 3 tallies for Mr. Magruder; that no one touched any one or more of said ballots, except himself, and he replaced all the said ballots unstrung, and the other papers except the said certificate, in said ballot box, and has the same in his exclusive custody to this day.

And further, he gave evidence to show, by two of the judges of the said precinct, that on the day of the election, and immediately after the close of the poll, they counted over the ballots received, and there were two hundred and sixty-two only; that they then began to count the separate vote for each candidate, and had prepared two tally lists, and begun to count, when they invited a citizen to assist them as clerk, who did so, one of the judges taking the ballot, and reading off the names respectively; another of the judges and also the said clerk scoring the same each for himself on the respective tally lists; and after the whole vote on the ticket was thus scored, the ballot was passed by the judge, who read it
53 to the third judge, who passed a needle through it and strung it on a string, and so on to the end; that when the tally was completed the clerk and the judge who kept the tally, each for himself, summed up the vote of each candidate, and agreed in the result, and each announced Mr. Addison 144, Mr. Crawford 123, Mr. Magruder 15, and so on; that the certificate was then prepared and signed by the judges; the ballots thus strung were put into the bottom of the box; none were loose; over them was put the tally paper so kept by the said clerk, (the other tally paper being kept on the table, and afterwards taken up and kept by one of the judges, not be the same who made it,) the list of persons assessed. the list of names of voters whose votes were received, and which was kept during the poll by one of the judges, and shows 261 votes received, and on the

top of all the certificate made out by the judges; the box was closed and locked, the key put into the possession of one of the judges, and the box into the care of another, and then taken by those two judges to the mayor's office, and the box delivered to the said clerk of the corporation the same evening, and the key the next morning; and the same defendant now produces the said tally paper so kept by the said judge, and reads it in evidence as follows, (here insert the tallies and summing up for the several candidates for mayor;) that the said tallies exactly correspond; and further, in order to show a mistake in the count of the votes so certified by the said judges of said precinct, the said defendant, in the presence and with the aid of the jury here now, counts all the said ballots so as aforesaid returned by said judges of said precinct for each and every of the respective offices voted for at said election, and the counts correspond precisely, tally for tally, with the said two tally lists and with the certificate of the said judges, except that the vote for said relator should have been carried out 103 instead of 123.

And the defendant further gave in evidence the ballots, the tally lists, the assessor's list, and the certificates of the three other precincts respectively, by all which it appears that the said defendant received—

In the 1st precinct			165
2d	do.		144
3d	do.		122
4th	do.		104
			535
And the relator in the 1st precinct		90	
in the 2d		103	
3d		147	
54 And the relator in the 4th precinct		191	
			531
Whereby the defendant has a majority of			4

And the defendant rested.

And thereupon the relator offered to give evidence to show that sundry persons, whose votes so as aforesaid received at the said election for said def't, were not corporators of the said town of Georgetown, duly and lawfully authorized to vote thereat. And the defendant, by his counsel, objects to the admissibility of said evidence. But the court overruled the said objection, and permits the same to be given; whereupon the def't excepts, and prays the court to sign and seal this his 1st bill of exception, which is done this 7th day of December, 1859.

[SEAL.] JAS. DUNLOP.
[SEAL.] JAS. S. MORSELL.
[SEAL.] WM. M. MERRICK.

It is agreed that the office of mayor, referred to in the proceedings in this case, is elected for two years, and that the salary is $1,000 per annum, payable monthly.

R. J. BRENT & CARLISLE, *for Rel'r.*
BRADLEY & DAVIS, *for Defendant.*

Defendant's 2d bill of exception.

On the further trial of this cause, the plaintiff, to support the issue on their part joined, in order to prove that one Joseph Blackburn, whose vote had been cast and received at said election for the said defendant, was not of full age at the time he so voted, offered to read in evidence from the register of baptism and christening of Trinity parish, in Georgetown, as follows: (copied on page ,) and in order to lay the foundation for the introduction of the same, gave evidence to show that the said entry is in the handwriting of P. Sacchi, who was at the date thereof the pastor of said church, and whose duty it was, on making the said entry and administering the said rite of baptism and christening, to ascertain the date of the birth of the child from the parents, sponsor, or some other responsible person, and to make the same part of the said register; that the said P. Sacchi and the said father of said infant and said sponsor, named in said register, are all dead, and the mother of the said voter, Joseph Blackburn, is very infirm and incapable of attending this court to testify, and also gave evidence tending to show that she is insane. But the admissibility of said paper for the purpose of showing the age of the said voter is objected to by defendant's counsel, and the
55 court overruled said objection, and permits the said evidence to be read to the jury as evidence, tending to show the age of said voter; and the defendant, by his counsel, excepts thereto, and prays the court to sign and seal this his second bill of exception, which is done accordingly this 10th day of December, 1859.

[SEAL.] JAS. DUNLOP.
[SEAL.] WM. M. MERRICK.

Extract referred to in the aforegoing bill of exception, from the registry of said parish, (1 Leading,) baptised and christened:

"Date 1839. Joseph William, son of William Blackburn and Elizabeth Blackburn, his wife, March 9, born in Georgetown, D. C., on the 26th last. Sponsor, Catherine Green.

(Signed) PH. A. SACCHI."

Defendant's 3d bill of exception.

On the further trial of this cause the defendant, further to maintain the issue on his part joined, and in order to show that John Horrigan was not a citizen of the United States and not a qualified voter, offered to give evidence to show that the said John Horrigan is a native-born citizen of Ireland, and that the record of his naturalization in the circuit court of the district of Columbia, on the 19th day of February, 1859; and then offered to prove by parol that in

point of fact that the said John Horrigan was not before the circuit court at the time the said certificate purports to show he was naturalized, or at any other time for the purpose or with the intent of being naturalized; but that, in point of fact, the evidence on which the same was granted was taken by the clerk in the clerk's office, out of the presence and hearing of the said court, and being reduced to writing, was brought by the said clerk to the said court, or one of the judges thereof, in the absence of said Horigan and his witnesses, and by the said court, or the said judge, the order for the naturalization of the said Horigan was made. But the court refuses to permit the said evidence to be given, and the said defendant, by his counsel, excepts thereto, and prays the court to sign and seal this his 3d bill of exception.

[SEAL.] JAS. DUNLOP.
[SEAL.] WM. M. MERRICK.

The record of naturalization referred to in the aforegoing bill of exception is hereto annexed:

DISTRICT OF COLUMBIA, *to wit:*

At a circuit court of the United States for the District of Columbia hold for the county of Washington, at the city of Washington, on the third Monday of January, in the year of our Lord one thousand eight hundred and fifty-nine, and of the independence of the United States the eighty-third:

56 Present, the honorable James Dunlop, chief judge; James S. Morsell, Wm. M. Merrick, assistant judges; William Selden, esquire, marshal; John A. Smith clerk.

In the record of proceedings of the same court, among others are the following, to wit:

Be it remembered, that heretofore, to wit, 5th day of February, in the year of our Lord one thousand eight hundred and fifty-six, at the county of Washington aforesaid, appeared John Horigan, a native of Ireland, aged about twenty-five years, bearing allegiance to the Queen of Great Britain and Ireland, having emigrated from Liverpool, and arrived at New York on the first day of December, in the year of our Lord one thousand eight hundred and fifty-three, and intends to settle at Washington, D. C., and in open court reported himself for naturalization, and declared on oath, that it is bona fide his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate state or sovereignty whatever, and particularly to the Queen of Great Britain and Ireland, according to the laws of Congress in such case made and provided.

And now, to wit, on this 19th day of February, in the year of our our Lord one thousand eight hundred and fifty-nine, appears again in open court here the said John Horigan, and exhibits to the court here a certificate of his report and declaration aforesaid; and it appearing to the satisfaction of the court, by the oath of George M. Sothoron, a citizen of the United States, that the said John Horigan

has resided within the limits and under the jurisdiction of the United States for five years last past, without having been out of the territory of the United States during that time, and one year last past within the limits and under the jurisdiction of this court, and that during that time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same.

And the said John Horigan in open court here makes oath that he will support the Constitution of the United States, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state or sovereignty whatever, and particularly to the Queen of Great Britain and Ireland, to whom he was before a subject. It is thereupon ordered by the court here, that the said John Horigan be admitted a citizen of the United States; and he is accordingly admitted a citizen of the United States, agreeably to the laws of Congress in such case made and provided.

57 In testimony that the foregoing is truly taken from the records of the proceedings of the said court, I have hereto subscribed my name, and affixed the seal of the said court, the 19th day of February, one thousand eight hundred and fifty-nine.

[L.S.] JNO. SMITH, *Cl'k.*

And before the jurors aforesaid left the bar of the court, the exceptions following were taken by said relator by his attorneys aforesaid:

Relator's 1st bill of exception.

On the trial of this cause, the defendant having given evidence tending to show that an election for mayor of Georgetown was regularly holden under the charters of the said town, on the 28th day of February, 1859, read in evidence the returns of the judges of election at the several precinct, as follows: (copied on page ;) and the defendant, by his counsel, having stated, in offering the returns of the 2d precinct hereinbefore set forth, that he intended to offer evidence to impeach the same for mistake in fact, in summing up the votes given for the relator at the said precinct, now offered evidence tending to show that the relator did not in fact receive at that precinct one hundred and twenty-three votes, as returned and certified by the judges, but only one hundred and three votes.

To the admissibility of which evidence the U. S., on the relation aforesaid, objected; but the court overruled the said objection, and permitted the said defendant to give the said evidence to the jury, and to go behind the certificate of the judges, to ascertain by evidence aliunde the true majority of votes.

And the U. S., on the relation aforesaid, except to the said ruling of the court, and prays that this bill of exception may be signed, sealed and enrolled, which is accordingly done, this 7th day of December, 1859.

[SEAL.] JAS. DUNLOP,
[SEAL.] JAS. S. MORSELL,
[SEAL.] WH. M. MERRICK.

Relator's 2d bill of exception.

On the further trial of this cause the U. S. gave evidence that John Marbury voted at the said election in the precinct, and that his vote was received by the judges, and that at the time of so voting, the said John Marbury had not paid his school tax, but paid the same after he had voted and after his vote had been deposited in the ballot-box, and after he had left the polls and without returning to the polls, by giving a dollar to a boy who overtook him on the street on his way home; which boy afterwards, on the day of the election, delivered to the judges at the polls, before the closing of the
58 same, the receipt of the collector of taxes for the said school tax of said Marbury; and after giving such proof, the U. S. offered to prove by the said Marbury, who was on the witness stand, and had testified without objection to the facts, that he voted without paying his school tax, (through inadvertence,) and had not returned to the polls, but had given the dollar to the boy in the street as aforesaid; that he had voted for the defendant. But the said Marbury, after stating that the ballot which he so deposited had on it the name of a certain candidate for the council, whom he named, declined to state the further contents of the said ballot, or whether the same was for the defendant or relator for mayor. And the U.S. insisting that he was bound to answer whether the said ballot bore the name of the defendant or of the relator for mayor, the court ruled that he was privileged not to answer thereto.

And the court further ruled, that the subsequent payment of the school-tax, on the same day as aforesaid, validated the vote of the said Marbury, previously given as aforesaid, and made the same a legal vote, so that evidence that he voted for the defendant was irrelevant and inadmissible.

To which ruling the pl'ff excepts, and this bill of exception is signed, sealed, and enrolled, this 7th day of December, 1859.

[SEAL.] JAS. DUNLOP,
[SEAL.] JAS. S. MORSELL.

And whereas, afterwards, to wit, on the 14th day of Dec'r, in the year of our Lord one thousand eight hundred and fifty-nine, the said respondent, by his attorneys aforesaid, produced and filed in court here, the United States writ for the correcting of errors of and upon the judgment aforesaid, directed to the judges of the circuit court of the District of Columbia, and in pursuance thereof, and according to the form and effect of the law in such case made and provided, a transcript of the record of proceedings of the judgment aforesaid, and all things thereunto relating, with the writ of error aforesaid and a copy of the appeal bond hereto annexed, is hereby transmitted to the said Supreme Court accordingly.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said court, this 27th day of December, 1859.

Filed 27th Dec., 1859.

[SEAL.] JNO. A. SMITH, *Cl'k.*

59 EXHIBIT A 5.

THE UNITED STATES OF AMERICA, *sct:*

The President of the United States of America to the judges of the circuit court of the United States for the District of Columbia, greeting:

Whereas in a certain suit in said circuit court between the U. S. at the relation of R. R. Crawford, plaintiff, and Henry Addison, defendant, which is now before the Supreme Court of the United States, in a petition of said R. R. Crawford, for a preremptory mandamus directing the judges of the said circuit court to issue a writ of ouster, or a rule to show cause, &c., or diminution of the record and proceedings in said court has been suggested, to wit: That the copy of the record does not show that a verdict in writing, signed by the jurors, respectively, was returned by them and filed in the cause in said court. You are, therefore, hereby commanded that searching the records and proceedings in said cause, you certify whether the jurors in the said cause did return a verdict in writing, signed by the said jurors, respectively, and whether the same is filed among the proceedings in said cause, and return a copy thereof, together with any other omissions and errors, you shall find, to the said Supreme Court of the U. S's, that you have the same together with this writ before the said Supreme Court forthwith.

60 Witness the Hon. Roger B. Taney, Chief Justice of said Supreme Court, this 13th day of December, A. D. 1859.

WM. THOS. CARROLL,
Clerk, S. C. U. S.

DISTRICT OF COLUMBIA, *County of Washington, sc:*

To the hon. Supreme Court of the U. S.:

In pursuance of the annexed writ of diminution, directed to the judges of the circuit court of the U. S. for the District of Columbia, suggesting diminution in the record in the case of the U. S. on the relation of Richard R. Crawford against Henry Addison, respondent, commanding this court, that searching the records and proceedings in said cause, you certify whether the jurors in the said cause did return a verdict in writing, signed by the said jurors respectively, and whether the same is filed among the proceedings in said cause and return a copy hereof, together with any other omissions and errors you shall find, to the Supreme Court.

The court here have duly searched the records and proceedings in said cause, and we certify that on the morning of the day the verdict was rendered, the jury sworn in the cause came into court, and being called over, and asked "whether they had agreed on a ver-

61 dict," replied, they had, and tendered a sealed paper, which was opened by the clerk of the court and read out, and was in words following, to wit:

CIRCUIT COURT ROOM, WASHINGTON, D. C.,
December 13*th*, 1859.

We, the undersigned, jurors in the case of Crawford *vs.* Addision, have agreed upon the following verdict, viz:

That the votes received respectively by each candidate makes the vote a tie.

Respectfully,

MICHAEL R. COOMBS.	ALFRED RAY.
R. M. HARRISON.	L. M. SYLVESTER.
I. GALLIGAN.	JAMES OWNER.
BENNETT HENNING.	JAMES McCOLGAN.
E. EDMONSTON.	THOS. DONOHO LARNER.
FRANCIS FITMAN.	THOS. C. YOUNG.

When immediately the relator, by his his counsel, objected to its being rec'd as a verdict, and thereupon, and with assent of the attorney of the respondent, the court refused to receive the said paper writing as and for a verdict of the said jury upon the issues joined as aforesaid, and directed the jury to return to their room and again to consider of their verdict; they did retire as directed by the court, and thereupon brought into court the verdict as set forth in the record now in the Supreme Court, and on which the judgment of the court was rendered. The said paper writing as above set forth, with
62 the signatures of the jurors, was left by the jury, and is still here. The foregoing, together with the record heretofore certified unto the hon'ble the S. C. of the United States, is a full transcript of the whole proceedings therein, without any diminution or addition whatsoever.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said court this 3rd day of January, 1860.

JNO. A. SMITH, *Clerk.*

Agreed to be a copy.

RRADLEY, *for Def't.*
R. J. BRENT, *for Pl'ff.*

Dec'r 29, 1864.

63 EXHIBIT B.

Joint convention of the two boards held *held* in the council chamber, Thursday, 15th Dec., 1859. Present, Mess. Magruder, Sweeney, Riley, Libbey, and Wheatley, of the board of aldermen; and Mess. Hyde, Lazenby, Marbury, Offutt, Shoemaker, Tenney, Bangs, King, and Stake, of the board of common council.

Doc. Riley, pres. pro tem. of the board of aldermen, took the chair, and having called the convention to order, stated the object of its meeting to be to take into consideration the mayor's message relative to the mayoralty.

Mr. Sweeney then, on leave, offered the following resolution, viz:

Whereas a jury of the circuit court of the District of Columbia, at its present term, has rendered a verdict in the case of R. R. Crawford and Henry Addison, that there was a tie vote between said Ad-

dison and Crawford, and that Henry Addison did not receive a majority of the votes cast at the last election in town.

64 Therefore be it resolved by the board of alderman and board of common council of the corporation of Georgetown in joint convention assembled, (though different in opinion with the jury of the said court as set forth in their verdict,) do now, as required by the charter of this town, proceed to elect a mayor from the two candidates who received the highest number of votes cast at the election held in February, 1859.

The above resolution having been read, Mr. Stake rose and claimed the privilege of objecting to a further reading of the resolution, with a view of preventing all further action upon it at present. His objections were considered by the chair not to be in order.

Mr. King then moved that the resolution be referred to the recorder, and on this question the ayes and nays were called by Mr. Stake, and ordered and resulted as follows:

Ayes—Mess. Stake and King—2.

Nays—Mess. Magruder, Sweeney, Libbey, Wheatley, Riley, Hyde, Lazenby, Marbury, Offutt, Shoemaker, Tenney, Bangs—12.

The motion to refer the resolution to the recorder was therefore lost.

The question was then taken on the passage of the resolu-
65 tion. Mr. Stake calling for the ayes and nays, which were ordered and resulted as follows:

Ayes—Messrs. Magruder, Sweeny, Libbey, Wheatley, Riley, Hyde, Lazenby, Marbury, Offutt, Shoemaker, Tenney Bangs—12.

Nays—Messrs. Stake and King—2.

The resolution was accordingly passed.

The convention then proceeded to ballot for the election of mayor from the two candidates who had received the highest number of votes at the election held on the fourth Monday in Feb'y last. The chair appointed Messrs. King and Magruder as tellers.

The ballots having been counted, the tellers reported that thirteen had been cast, and the whole for Mr. Addison.

The chair accordingly announced that Mr. Addison had been unanimously elected mayor to serve until the fourth Monday of February, 1861.

Mr. Bangs moved that a committee of three be now appointed to wait on Mr. Addison and request his presence in the convention to take the usual oath of office, which motion prevailed, and Mess. Bangs, Tenney, and Marbury were appointed by the chair, as the committees, who retired to perform the duty assigned to them.

66 The committee returned and introduced Mr. Addison into the convention, and after the chair had announced to him his election as mayor, the oath of office was administered to him by Henry Reaver, esq., a justice of the peace for the county of Washington, D. C., who was present for the purpose. Whereupon Mr. Addison addressed the meeting, and, after the conclusion of his address, there being no further business to be transacted, the convention adjourned sine die.

WILLIAM LAIRD, *Clerk.*

Dec. 24, 1864. I do certify that the above is a true copy of the records of the corporation of Georgetown, D. C.

[SEAL.] WM. LAIRD, *Clerk.*

EXHIBIT C.

"Whereas doubts have been expressed as to the legality of the proceedings of the joint meeting of the two boards held on the 15th day of December ultimo, and of the election of Henry Addison to the office of mayor of the corporation at said meeting, now, in order to remove every possible ground of objection to the legality of the proceedings in regard to the election of a mayor by the two boards in joint meeting—

67 *Be it resolved by the board of aldermen and board of common council of the corporation of Georgetown in joint convention assembled*, That the convention being duly informed that the jury in the case of the United States at relation of Richard R. Crawford against Henry Addison returned to the circuit court of this district a sealed verdict, finding as follows:

Circuit court of the District of Columbia.

CIRCUIT COURT ROOM,
Washington, D. C. December 13th, 1859.

We, the undersigned jurors in the case of Crawford *vs.* Addison, have agreed upon the following verdict, viz: that the votes received respectfully by each candidate makes the vote a tie.

Respectfully,

MICHAEL R. COOMBS.	ALFRED RAY.
R. M. HARRISON.	L. M. SYLVESTER.
T. GALLIGAN.	JAMES OWNER.
BENNETT HENNING.	JAMES McCOLGAR.
E. EDMONDSON.	THOS. DONOHO LARNER.
FRANCIS FITNAM.	THOS. C. YOUNG.

True copy. BENJ'N F. LLOYD.

Therefore we do now, pursuant to the charter of our corporation, in the case of two persons having equal number of votes for said office, proceed to the election of a mayor; and be it also

68 *Resolved*, That we do not intend hereby to admit that there was or is any irregularity in the proceedings of the said 15th day of December ultimo, but this election is held out of abundant caution only:

Mr. Stake moved to lay the resolution on the table, which motion he subsequently withdrew, and moved to refer it to the recorder, protesting against its being acted on.

The motion to refer it to the recorder was not sustained.

Mr. Marbury moved that the resolution be adopted, and called for the previous question; which call being sustained, the question was taken on the passage of the resolution, and by ayes and nays, as called for, ordered, which were as follows:

Ayes—Mess. Caperton, Magruder, Libbey, Wheatley, Sweeney, Riley, Bangs, Tenney, Offutt, Shoemaker, Lazenby, Marbury, and Hyde.

Nays—Messrs. Stake, Pickrell, and King.

The resolution was accordingly passed, and, on motion of Mr. Hyde, was ordered to be printed, together with the vote taken on it by ayes and nays.

The convention then proceeded to carry out the foregoing resolution, and to elect a mayor, and the members were directed to prepare their ballots for that purpose.

69 The ballots having been counted, the tellers reported that eleven had been cast, and that Henry Addison, esq., had received the whole. He was, therefore, declared duly elected mayor of the town, and a committee appointed to request his presence in the chamber to take the usual oath of office.

Henry Addison was introduced into the chamber, and having been notified by the chair of his election by the convention as mayor of the town, took, in presence of the convention, the usual oath of office, which was administered to him by Henry Reaver, esq., a justice of the peace for the county of Washington, D. C.

I do hereby certify that the above is a true copy from the records of the corporation of the proceedings that took place in the joint convention of the two boards on the 2d of January, 1860.

Dec'r 24, 1864.

WM. LAIRD, *Clerk.*

EXHIBIT D.

Joint convention of the two boards January 21st, 1861.

Present, all the members, except Mr. Dodge, of the board of common council, and Doct'r Riley, of the board of aldermen.

The recorder took the chair, and called the joint meeting to order.

Mr. Stake moved that a committee be appointed to wait upon R. R. Crawford, esq'r, and request his presence in the chamber, in or-

70 der to qualify as mayor by taking the usual oath of office, which motion was adopted, and Mess. Stake and Beall were nominated by the chair as the committee to wait upon Mr. Crawford for the aforesaid purpose.

Mr. Crawford was introduced into the chamber by the committee, and the oath of office as mayor was duly administered to him by Jos. N. Fearson, a justice of the peace for the county of Washington.

Mr. Crawford then addressed the convention. On the conclusion of his remarks, the convention, having no further business before it, adjourned sine die, and the aldermen retired to their own chamber.

WM. LAIRD, *Clerk.*

Plaintiffs' second exception.

After the ruling of the court, made a part hereof as stated in the aforegoing exception or either of them, and after the whole agreement of facts was read to the jury as aforesaid, the plaintiffs' counsel presented to the court the three prayers numbered 1, 2, and 3, made a

part hereof, and prayed the court to grant the same and each of them, but the court refused to grant the same and either of them as presented, and thereupon the plaintiffs except, and this his bill of exceptions is signed, sealed, and enrolled this 29th Dec'r, 1864.

[SEAL.] D. K. CARTTER, *Ch'f Justice.*

71 *Plaintiff's prayer No.* 1.

The plaintiff's counsel pray the court to instruct the jury that the plaintiff is entitled to recover in this action upon the agreement of facts read in evidence.

Not granted.

D. K. CARTTER, *Ch'f Justice.*

Plaintiff's second prayer.

If the jury find from the evidence aforesaid that the defendant, Addison, was removed from the office of mayor of Georgetown at the time and in the manner stated in the agreement of facts, and that during the time he acted as such mayor he received the salary of said office to the amount and for the time stated in said agreement of facts, and if the jury further find that said Addison did not prosecute his writ of error with effect, then the plaintiffs are entitled to recover against the defendant, as damages chargeable under said writ of error, and for the use of said relator, R. R. Crawford, the amount so received by said Addison from the date of said writ of error bond until the removal of said Addison, as stated in said agreement of facts, with such interest thereon at the rate of six per cent per annum as the jury may think proper, provided the jury shall further find that the said relator, R. R. Crawford, was duly elected and qualified as mayor of Georgetown, under and by virtue of the election held
72 therein on the 4th Monday of February, 1857, and that he continued and was ready and willing to discharge the duties of said office of mayor and was only prevented from so doing by the interference of said defendant, Addison, and by his assuming to exercise the functions of said office for the time and in the manner stated in the agreement of facts.

The foregoing prayer is overruled by this court, and for the reason, among others, that there is no evidence in this case that the defendant by his interference prevented the plaintiff from the exercise of the office.

D. K. CARTTER, *Ch'f Justice.*

Plaintiff's 3d prayer.

If the jury find all the facts stated in said agreement of facts, the plaintiffs are entitled to recover in this action, and the measure of damages for which the defendants are liable on said writ of error bond will be the amount which the jury shall find was received by the defendant, Addison, as and for the salary of the mayor of Georgetown, prior to his removal from said office, as stated in the evidence, and

subsequent to the date of the said writ of error bond. Pro-
73 vided the jury shall find that said relator, Crawford, was duly elected and qualified as mayor of Georgetown under the election holden the 4th Monday of February, 1857, and continued to act as such mayor, until ousted from said office by said Addison, in the manner and for the time stated in the evidence.

Not granted.

D. K. CARTTER, *Ch'f Justice.*

And in testimony that the foregoing is a true and complete transcript of the proceedings of said court in said cause, as the same are on file and remain of record in the clerk's office aforesaid, I hereunto subscribe my name and affix the seal of said court at office in the city of Washington, the 13th of February, 1865.

[SEAL.] R. J. MEIGS, *Clerk.*

[5-ct. rev. stamp.]

SUPREME COURT OF THE UNITED STATES.

In the Supreme Court, Dec'r T., 1869.

THE UNITED STATES, use of R. R. CRAWFORD,
vs.
HENRY ADDISON and others. } No. 104.

It is agreed in this cause that the Clerk of the Supreme Court of the District of Columbia, in making up the record, having omitted to insert the defendants pleas of performance, non-performance, and the issue joined, that certified copies thereof may now be filed, and made part of the record in this court, instead of waiting for a certiorari to be issued for that purpose.

R. J. BRENT, *for Pl'ff.*
JOS. H. BRADLEY, *for Def't.*

In the Supreme Court of the District of Columbia.

UNITED STATES, use of R. R. CRAWFORD,
vs.
HENRY ADDISON, E. M. LINTHICUM, JUDSON Mitchell, Jos. Libby, William H. Tenny, and William H. Edes.

Whereupon, the said defendants, by Joseph H. Bradley, esq'r, their attorney, come and defend the wrong and injury, when, and so forth, and having read the said writing obligatory and the condition thereof, say, that the said plaintiff the action aforesaid thereof against them, to have or maintain, ought not; because they said that the said Henry Addison, in the condition of the said writing obligatory mentioned, did cause a transcript of the record and proceedings of the said cause, wherein the United States, on the relation of Richard R. Crawford, were plaintiffs, and the said Henry Addison, defendant, as set out in the condition of the said bond, to be transmitted to the Supreme Court of the United States, and that such proceedings were thereupon had, by that court considered, that the said writ of error be dismissed with costs; and the said Henry Addison did pay to the said plaintiffs all damages and costs awarded by the said Supreme Court of the United States aforesaid, and all other damages by reason of the said writ of error; and this they are ready to verify, wherefore they pray judgment, &c.

JOS. H. BRADLEY, *for Def'ts.*

And the said plaintiffs aver, that the said Henry Addison did not prosecute his said writ of error with effect, and did not pay the said damages and costs, so as aforesaid, by the said Supreme Court of the

United States, together with all other damages by reason of the said writ of error, and of this they put themselves upon the country, and the defendants do likewise.

DISTRICT OF COLUMBIA, *to wit*:

I, Return I. Meigs, Clerk of the Supreme Court of the District of Columbia, do hereby certify that the aforegoing plea of performance, replication and issue, are truly and correctly copied from the originals in the case of the United States, use of R. R. Crawford, against Henry Addison *et al*.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of court said 10th day of February, 1868.

[SEAL.] R. J. MEIGS, *Cl'k*.

Endorsed: Supreme Court U. S. 1867. Dec. term. No. 104. U. States ex rel. R. R. Crawford *vs.* Addison & al. Amendment to record. Filed 10th February, 1868.

Supreme Court of the United States.

THE UNITED STATES,
ON THE RELATION OF
CRAWFORD,
vs.
HENRY ADDISON, *et al.*

BRIEF OF PLAINTIFF IN ERROR.

The relator, R. R. Crawford, was duly elected Mayor of Georgetown, and was such on the fourth Monday of February, 1859, when an election for Mayor was held for the ensuing two years, and at said election he was returned by the judges as elected for said two years, and he qualified by taking the oath of office; but *the Council*, pretending that, upon a *recount* of the ballots in their presence, his competitor, Henry Addison, was elected on said fourth Monday of February, 1859, refused to recognize the relator as Mayor, and caused the said Addison to be sworn in as Mayor, and who continued to exercise the functions of that office until removed by the Circuit Court of the District of Columbia.

Record, p. 7.

By the *quo warranto* proceedings and agreement of facts, it appears that the jury found their verdict in favor of the relator on the 13th December, 1859.

Record, pp. 7 and 8.

And the judgment of *ouster* was thereupon rendered against the said Addison, (Record, pp. 8 and 31,) which

judgment of *ouster* was superseded by the defendant's suing out a writ of error, and bond [redacted] so as to be a *supersedeas*.

Record, p. 32.

The writ of error issued on the 14th December, 1859, the day after the verdict, and the writ of error bond was [redacted] approved on same day.

Record, pp. 15 and 16.

The judgment being thus suspended, the writ of error sued out by Addison was dismissed, and the mandate filed in the Court below on the 9th January, 1861, when the defendant was finally dispossessed on the 21st January, 1861.

Record, pp. 8 and 44.

During all the time between the 14th December, 1859, and 21st January, 1861, a period of one year, one month, and seven days, the relator was deprived of the enjoyment and salary of his office by the *supersedeas* writ of error bond.

The salary received by Addison, and thus withheld from the relator, is proved to have been at the rate of $1,000 a year, which amounts, from the 14th December, 1859, (the date of the writ of error bond,) to 21st January, 1861, (the day of the enforcement of the judgment of *ouster*,) to $1,104.16, with interest from 21st January, 1861.

We claimed to recover this amount as *damages* chargeable to the writ of error bond, which see in

Record, p. 16–17.

The breaches of that bond as set forth in the narr. are four in number.

Record, pp. 3–4.

Issues being joined on these breaches, and the plea of performance, the Court rejected the three prayers of the plaintiff, which were designed to present his right to recover.

Record, pp. 44–5.

These prayers should have been granted—

The first prayer because the agreement of facts confesses the breach of the bond and shows the *quantum* of damage.

The second prayer specifically seeks to recover, as damages incurred by the *supersedeas* bond, the salary received by Addison as *de facto* Mayor during the time when it operated as a *supersedeas* of the judgment of *ouster*. The reason specified by the Court below is in the teeth of the evidence showing that the defendant, Addison, had interfered by exercising the duties of the relator's office, and by superseding the judgment of *ouster* by his writ of error bond.

Record, p. 8.

The third prayer claims, as the measure of damages, the amount of salary received by Addison after the date of his writ of error bond; provided, the jury find the due election and qualification of Crawford under the election held the 4th Monday of February, 1857.

By the charter of Georgetown all elections for Mayor are *biennial* on the 4th Monday of February.

Stat. at Large, vol. 4, p. 426, act of May 31, 1830, sec. 2.

And the agreement of facts shows that the relator was Mayor on the 4th Monday of February, 1859, and had been for two years previously, and that the *contest* arose in regard to the usurpation of the office by Addison under the election held on the fourth Monday of February, 1859. As, by the judgment of *ouster*, Addison was legally removed from the office, it results, that if it had not been superseded the relator would have rightfully held the office, either by the declaration of the return judges who held the election on the fourth Monday of February, 1859, and who declared Crawford duly elected, or by that provision in the charter which enacts that the Mayor shall hold over until a successor is legally elected and qualified.

Stat. at Large, vol. 4, p. 426, act of May 31, 1830, sec. 2.

The effect of a judgment of *ouster* would then be to remove the usurper from the exercise of the functions of the office, and thus enable the relator as Mayor *de jure* to enter upon his duties, he having been duly qualified. This judgment of *ouster* is given by the statute 9, Ann. ch. 20, which is in force in Maryland.

Kelty's Reports, 268.
9 Md. Reports 99.
Ang. & Ames on corporations, p. 872.

But the *supersedeas* of that judgment by the writ of error bond now in suit, as *directly* ruled by this Court in this very case has caused this damage to the relator, for which he now sues.

See case—United States, *ex rel.*, Crawford vs. Addison, 22 How. 183.

This last case expressly settles the following proposition, viz:

1st. That the value of the office was the matter in dispute between these parties in the *quo warranto* suit.

2d. That the value was the annual salary.

3d. That the annual salary being $1000 per annum this Court had jurisdiction of that writ of error.

If these propositions be right, then the measure of our damages must be the loss of salary during the time the judgment of *ouster* was superseded, and the plaintiff's prayers should have been granted.

BRENT & CARLISLE,
For Plaintiff in Error.

IN THE SUPREME COURT.

No. 104.—DECEMBER TERM, 1867.

THE UNITED STATES ON THE RELATION OF R. R. CRAWFORD

vs.

HENRY ADDISON & OTHERS.

IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Statement of the Case.

This is an action brought on a bond given by the defendant, Addison, and his sureties, on a writ of error to the Circuit Court of the District of Columbia, which bond is dated 14th December, 1859.

The breaches assigned are—

1. That he did not prosecute to effect his writ of error.

2. That he did not answer all damages and costs by his failure to make his plea good, to wit: That he did not satisfy and pay unto Richard R. Crawford, the relator in the case recited in the condition of said bond, the sum of $1,000 annually, for the term of two years, from the 1st day of March, 1859, which Crawford would otherwise have received for his own use but for the suing out of said writ of error.

3d. That he did not satisfy Crawford—$3,000 of which he was wrongfully deprived by force and effect of said writ of error.

4. That by force and effect of the suing out of said writ of error, Addison received $2,000 as acting Mayor of

Georgetown, as money had and received by him to the use of said R. R. Crawford, the lawful Mayor of Georgetown, which otherwise Crawford would have received, and afterwards refused to pay it to Crawford.

Pleas performance, non performance and issue.

There is an agreement at p. 7 between the counsel for the respective parties by which all errors in pleading are waived, and "under the issues joined either party may give in evidence any special matter, of which notice shall be given to the other before the jury is sworn, subject to the opinion of the Court as to the competency and admissibility of such evidence, and as to any part of the evidence hereinafter set out."

No oral or parol evidence was given on the trial; but the whole case turned on written proofs set out in the record.

The history of the case, as disclosed by the record, is, in substance, as follows:

The real plaintiff is Richard R. Crawford. He was, from February, 1857, to February, 1859, Mayor of Georgetown, in the District of Columbia. On the 4th Monday of February, 1859, an election was held for Mayor in said town pursuant to its charter. The returns were all regularly made; but by a mere clerical error in computing the votes received in the Second Precinct, it was computed that he, Crawford, had received one hundred and twenty-three votes, while his competitor, the defendant, Addison, had received one hundred and forty-four. In point of fact, Crawford had received only *one hundred and three*, instead of *one hundred and twenty-three* votes in that precinct. According to the usage of the town, the town Clerk, looking only to the returns, and not to the actual votes, reported Crawford as having the majority of votes, and therefore Mayor. Crawford appeared before the Councils in joint meeting, as required by the charter, and offered to take the official oath of office. But the error in the computation had in the mean while been discovered by

the judges and reported to the Councils. This led to an examination of the ballot boxes, under the direction of the Councils, when that error was verified, and it appeared that Addison had the majority of the votes. Addison was accordingly qualified and entered upon the office of Mayor. Crawford then filed a *quo warranto* in the Circuit Court of the District of Columbia; several votes which had been received by the respective parties were rejected under the rulings of the Court, and after a protracted trial, all the issues, except the fifth, was found for Addison. In that issue the relator alleged "that the defendant had not the greatest number of legal votes cast at the said election, and was not duly elected Mayor of the said town." The jury, responding to that issue, returned a verdict in writing as follows:

"CIRCUIT COURT-ROOM,

"WASHINGTON, D. C., *December* 13, 1859.

"We, the undersigned, jurors in the case of Crawford *vs.* Addison, have agreed upon the following verdict, viz: That the votes received respectively by each candidate makes the vote a tie."

This verdict was not received by the Court, and, "with the assent of the attorney of the respondent," the jury retired, and returned a verdict on that issue for the relator.

Thereupon, judgment of ouster was entered, with costs to the relator. Exceptions were taken by both parties to the rulings of the Court on that trial, and the defendant sued out a writ of error and filed his bond as a supersedeas to bring the case to this Court, at December Term. In 1859 a motion was made in this Court for a mandamus to the Circuit Court, to execute that judgment, which was refused, (22 How., 174.) The defendant, Addison, failed to prosecute his writ of error, and it was dismissed. All the costs have been paid by Addison.

In the mean while, on the 15th December, 1859, the

verdict in writing already stated, having been duly certified by the deputy clerk of the Circuit Court, the Councils of the town of Georgetown, proceeding according to the provisions of their charter in case of a tie-vote, held a joint meeting and unanimously elected the defendant, Addison, Mayor of said town. As such he continued to act and receive the salary of the office until the 18th of January, 1861, when he was dispossessed by a writ of ouster issued by the Circuit Court, and the plaintiff, Crawford, was installed as Mayor.

Crawford then brought this suit on the error bond given by Addison.

On the trial of the cause below, the agreement at p. 7 was read to the Court and jury, and the plaintiff proceeded to read the papers referred to in it, so far as they suited his case, and rested.

The defendant then read in evidence the paper marked B, pp. 41, 42, and offered to read the further proceedings of the Councils of Georgetown held at different times, but relating to the same subject matter, and authenticated in the same manner as those read by the plaintiff.

The papers are on pp. 43 and 44 of the record, and are the proceedings of the Councils (C,) electing Mr. Addison on the tie-vote as found by the jury, and (D.) the proceedings showing when Mr. Crawford was inducted into office in January, 1861.

The defendant submits the following propositions to show there was no error in the rulings of the Court:

I.

The plaintiff, in his assignment of errors, by abandoning, has waived his first exception, which was to the admissibility of certain evidence offered by the defendant below, and admitted by the Court.

But, if he can still avail himself of it, there was no error in that ruling of the Court.

The evidence consists of the acts of the corporate au-

thorities, of which corporation the plaintiff and defendant were both members; and of the finding of a jury in a case where these parties were plaintiff and defendant.

The evidence of the proceedings of the Corporation was admissible; the effect of it was a different question.

II.

The Councils had a right to proceed in both cases set out in the evidence, as they did proceed.

1. Any private Corporator had the same right to sue out the *quo warranto* as Mr. Crawford had. It, therefore, was a suit by the United States, to try whether Addison had or has not usurped the office—*not whether Crawford was entitled.* The judgment was a judgment of ouster of Addison, not restoration of Crawford. That could be effected only by other proceedings—by Crawford holding over as a failure to elect, by a new election voluntarily, or by mandamus, or by an election in case of a tie-vote.

Now, the judgment being only a judgment of ouster, Addison had a right to his writ of error; and, if he failed on that writ, he was liable only for the costs. These he has paid.

But, second, the judges of the election had a right to correct the computation which was erroneously made in their return. If uncorrected, it amounted to a *fraud,* however innocently made. It was in their control until the officer was sworn in according to law; then the Councils had a right to receive that corrected return. By that, Addison was duly elected and was sworn in.

The form of the issue, (even after the polls were purged,) under the direction of the Court, rendered it *necessary* for the jury to find *against Addison,* unless he had a *majority* of the votes. If there was a *tie,* still, their finding was *against* Addison, *not for Crawford.* The case then necessarily went back to the Councils. They were charged to elect in case of a tie. *The return of the judges of the election had been set*

aside in a case to which Crawford and Addison were parties, and yet there was nothing to show that Crawford had been elected. In case of a *tie*, Crawford would have held over *till an election* by the Councils; and, accordingly, the election was held on the day after the verdict was rendered.

The return of the judges having been set aside by competent judicial authority, it was competent for the Councils to inquire upon what ground the jury had found their verdict. What authority is shown to prevent them from looking to the first finding of the jury—to the finding in writing, which the Court refused to receive *as a verdict* of a fact, but which, nevertheless, was a fact ascertained by the jury in a cause in which these two men were parties? They found the fact of a *tie* under the instructions of the Court. What decided case has been referred to, to prevent them from resorting to this as one of the instruments of evidence, upon which their duty to elect immediately arose? Had they to *wait* till Crawford or Addison, or some one else, applied for a mandamus, and reply there had been no election? It was a tie-vote, and they had such evidence of the fact that they had proceeded to elect. That would have been a complete answer to such a writ.

The evidence of the tie-vote was another question. That would have arisen on the traverse of the return to the mandamus.

The statute does not provide for the proof of the tie-vote, nor how that fact shall be determined. Yet it imposes the duty on the Councils, in case of a tie. That duty carries with it the correlative duty to ascertain and declare the fact. When that is done, the party contesting has his remedy to enquire whether in fact there was a tie-vote. Until that is done, the election by the Councils must stand good. Nor has any technical objection been made in this case to the evidence of that fact, upon which the Councils acted.

By the agreed statement of facts, it is *admitted* that the

jury found the fact that there was a tie, and "that this fact shall be *admitted and taken as true, if the Court shall be of opinion that it is admissible in evidence.*" Printed Record, pp. 7, 8. On the trial, the plaintiff himself offered in evidence the agreed statement of facts, but *made no objection to the admissibility of this fact in evidence*, as appears by the first bill of exceptions. Printed Record, p. 8. It must therefore be "*taken to be true*;" and if so, then the right and the duty of the Councils, in case of a tie, to proceed to an election under the charter follows as a necessary consequence; and from that fact also follows the right of the Mayor, thus elected, to the salary of the office, earned after that election.

If we are right in these positions, then there was no error in the rulings of the Court. But suppose this is not so, then—

III.

The plaintiff is not entitled to any damages *from Addison*, because Addison is not alleged or proved to have been an actor in procuring the action of the Councils in their originally causing him to be sworn in, or in their electing him at a subsequent time; he only performed the duties of Mayor by order of the Councils.

If a man shall engage another to work for him by the year, and discharge him without cause, and then employ another, the discharged man can have no remedy against him who did the work and received the pay. The same rule must apply to a public office. The discharged officer may have his remedy against the person who discharged, or, in case of an elective officer, against those who have put another in his place, but he can have no remedy against the incumbent holding the office unlawfully, except to have him put out and fined for his usurpation.

IV.

The principal instruction asked for proceeded on the ground that the evidence showed that *Crawford was elected.*

But the fact is, that the proofs admitted without dispute showed that such was not the fact, and that the return of the judges had been corrected, and being corrected, showed that Addison was elected.

V.

The object of this suit is to recover, as "*damages*," under the writ of error bond, *the salary of the office of Mayor of Georgetown, which accrued after the date and the bond*, (viz., from December 14, 1859, till January, 1861,) by virtue of the judgment of ouster in the *quo warranto* proceeding, which became *final* from the failure of Addison to prosecute his writ of error with effect.

But that judgment is final and conclusive *only* against Addison's title to the office of Mayor *so far as he claimed to derive it from a direct election by the people.* If he had *continued* to hold the office *under that title only*, then the right of Crawford to recover under this bond any actual damages which he could show, resulted to him from Addison's failure to prosecute his writ of error, could not be successfully denied.

But the fact is, that from the 15th of December, 1859, the day after the date of the bond, Addison held the office of Mayor, *not by the old, but by a new title* derived under the charter of the Corporation—that is, *by virtue of a new election* by the City Councils, authorized by the charter in case of a failure to elect by the popular vote in consequence of a tie vote. This introduces an entirely new element into the case, in regard to which the Court in the *quo warranto* proceeding pronounced no judgment, and in regard to which the judgment of ouster, so far from being final and conclusive in this case, is *wholly irrelevant.*

There is no claim, it will be remembered, to recover damages under this bond for the salary of the office which accrued *prior* to December 14, 1859—that is, *when the office was held under the popular election.* On the contrary, the

claim is to recover as damages the salary which accrued and was received *after that date;* that is, *during the time when the office was held under a new and different title, derived from a new election by the City Councils.*

In this view, the evidence objected to in the first bill of exceptions was clearly admissible, in order to show this fact.

In like manner, and for the same reason, the Court below was right in refusing to grant the three prayers refused as prayed in the second bill of exceptions. The claim made was a right to recover, by virtue of the judgment in the *quo warranto* suit, the salary earned and received subsequently to the date of the bond, under a new, separate, and distinct title to the office of Mayor, the validity of which had not been considered nor adjudicated in that proceeding.

VI.

But supposing, for the sake of argument, that Addison was responsible on the bond for *damages*, the next question is as to the *measure of the damages.*

The instructions asked were erroneous.

1st. Because they assumed that the salary of the office of Mayor of Georgetown had a pecuniary value *other* than as "a compensation *for labor and services* performed" in the discharge of the duties of that office, contrary to the doctrine of this Court in Ritchie v. Mauro, 2 Peters, p. 244. Ch. J. Marshall.

2d. Because they assumed that the *whole salary* received by Addison after the date of the bond, was the measure of such damages; and not the *actual damages to Crawford;* that is, the *profit* of the office, if any; or the amount of the salary received by Addison, *less the amount which Crawford did receive, or reasonably might have received for his services in some other branch of business during the same period of time.*

On this point the analogies of the law are decisive.

1. *In cases of breach of contract for wages:* In such cases, if the servant or employé is illegally discharged, he is bound to seek other employment, so as to lessen the damages, and his right to recover the stipulated wages is subject to the right to recover the wages which he could reasonably have earned during time asked by the remainder of the contract.

Sedgwich on the Measure of Damages, 3d Edit., page [212,] note (1,) Ib., p. [215,] note *k.*, Ib., p. [223,] note (1,) Ib., p. [224,] note (1,) Ib., p. [453,] note 2.

2. *In cases of breaches of contract for freight or lodgings:* In such cases the claim for freight or rent is subject to be diminished by the amount of freight or rent received, or which might have been received by the exercise of reasonable diligence. Sedgwich on Damages, p. [210]–[212,] Ib., p. [430.]

3. *In cases of fallure to give possession of premises according to a lease:* In such cases the measure of damages is the difference between the value of the premises for the term, and the rent reserved. Ib., p. [194,] note (1.)

4. *In cases of suits on official bonds, for negligence and the like:* In such cases, the measure of damages is the actual loss sustained, and no more.

In cases collected in Sedgwich, on the measure of damages, p. [506,] &c., [509–511,] and notes; Ib., p. [513–517,] and notes, p. [519–521,] and note (1;) Ib., p. [525–527.]

Any evidence tending to show that no real injury had been sustained was therefore admissible; and, in view of the evidence admitted by the Court, tending to show that the office, after the date of the bond, was held by a new and different title, it was erroneous to assume that the salary which accrued after the date of the bond was, without qualification, the true measure of damages.

The Court below was, therefore, justified in refusing the

prayers contained in the second bill of exceptions, because they asked too much.

If a prayer, for instance, is not correct *in the very terms* in which it is drawn up, it is not error to refuse it. The Court is not bound to give a modified instruction. Brooks v. Marbury, 11 Wheat. R., 78; Catts v. Phalen, 2 Howard, U. S. R., p. 382; Violett v. Patten, 5 Cranch R., p. 152, Ch. J. Marshall.

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4. ~~St~~ 426 election of Sheriffs